

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BRIAN JOHNSON, et al.,

Plaintiffs,

vs.

MICROSOFT CORPORATION, a
Washington corporation,

Defendant.

No. CV06-0900 RAJ
[Consolidated Cases]

DECLARATION OF KARL J.
QUACKENBUSH IN SUPPORT OF
DEFENDANT MICROSOFT
CORPORATION'S OPPOSITION TO
PLAINTIFFS' MOTION FOR LEAVE
TO FILE THEIR THIRD AMENDED
CONSOLIDATED COMPLAINT

I, Karl J. Quackenbush, hereby declare as follows:

1. I am a principal at Riddell Williams P.S., counsel of record for Microsoft Corporation ("Microsoft") in this matter. I am over the age of eighteen and competent to testify.

2. Attached hereto as Exhibit "A" (pp. 4-5) is a true and correct copy of Plaintiffs' counsel's November 24, 2009 email to me.

3. Attached hereto as Exhibit "B" (pp. 6-16) is a true and correct copy of an excerpt from Plaintiffs' April 9, 2007 Answers to Microsoft's First Set of Interrogatories to the Original Plaintiffs.

4. Attached hereto as Exhibit "C" (pp. 17-28) is a true and correct copy of an excerpt from Plaintiffs' April 30, 2008 Responses to Microsoft's First Set of Interrogatories to the Newly Added Plaintiffs.

DECLARATION OF KARL J. QUACKENBUSH - 1
Case No. CV06-0900 RAJ
4816-1826-5349.01
010410/1116/20363.00450

RIDDELL WILLIAMS P.S.
1001 FOURTH AVENUE
SUITE 4500
SEATTLE, WASHINGTON 98154-1192
TELEPHONE: (206) 389-1583
FACSIMILE: (206) 389-1708

1 5. Attached hereto as Exhibit "D" (pp. 29-34) are true and correct copies of relevant
2 pages from the September 27, 2007 deposition transcript of Plaintiff Brian Johnson.

3 6. Attached hereto as Exhibit "E" (pp. 35-38) are true and correct copies of relevant
4 pages from the September 17, 2007 deposition transcript of Plaintiff Martin Sifuentes.

5 7. Attached hereto as Exhibit "F" (pp. 39-41) are true and correct copies of relevant
6 pages from the September 24, 2007 deposition transcript of the corporate designee for Plaintiff
7 Engineered Process Controls LLC, David DiDomizio.

8 8. Attached hereto as Exhibit "G" (pp. 42-45) are true and correct copies of relevant
9 pages from the July 9, 2008 deposition transcript of James Grennan.

10 9. Attached hereto as Exhibit "H" (pp. 46-51) are true and correct copies of relevant
11 pages from the August 6, 2008 deposition transcript of Brian Weatherill.

12 10. Attached hereto as Exhibit "I" (pp. 52-58) are true and correct copies of relevant
13 pages from the August 28, 2008 deposition transcript of Nathan Verrilli.

14 11. Attached hereto as Exhibit "J" (pp. 59-75) is a true and correct copy of
15 Microsoft's Objections and Supplemental Response to Newly Added Plaintiff Charles Ellis's
16 First Set of Interrogatories, dated September 5, 2008.

17 12. Attached hereto as Exhibit "K" (pp. 76-84) is a true and correct copy of
18 Microsoft's Objections and Second Supplemental Response to Newly Added Plaintiff Charles
19 Ellis's First Set of Interrogatories, dated September 10, 2008.

20 I declare under penalty of perjury that the foregoing is true and correct.

21 EXECUTED this 4th day of January, 2010, at Seattle, Washington.

22 /s/Karl J. Quackenbush
23 Karl J. Quackenbush, WSBA # 9602
24 RIDDELL WILLIAMS P.S.
25 1001 Fourth Avenue, Suite 4500
26 Seattle, WA 98154
 Tel: (206) 624-3600
 Fax: (206) 389-1708
 kquackenbush@riddellwilliams.com

DECLARATION OF KARL J. QUACKENBUSH - 2

Case No. CV06-0900 RAJ
4816-1826-5349.01
010410/1116/20363.00450

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CERTIFICATE OF SERVICE

I hereby certify that on January 4, 2010, I caused to be electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

David E. Breskin

Alan Himmelfarb

William W. Houck

Daniel F. Johnson

Scott A. Kamber

Todd Nunn

Roger M. Townsend

Jess G. Webster

/s/Karl J. Quackenbush
Karl J. Quackenbush, WSBA # 9602
RIDDELL WILLIAMS P.S.
1001 Fourth Avenue, Suite 4500
Seattle, WA 98154
Tel: (206) 624-3600
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kquackenbush@riddellwilliams.com

DECLARATION OF KARL J. QUACKENBUSH - 3

Case No. CV06-0900 RAJ

4816-1826-5349.01

010410/1116/20363.00450

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Exhibit A

From: Alan Himmelfarb [ahimmelfarb@kamberedelson.com]
Sent: Monday, November 23, 2009 8:29 AM
To: Quackenbush, Karl
Cc: 'Casper, Chuck'
Subject: RE: Johnson et al v. Microsoft

Karl: In response to your email, plaintiffs intend to file a motion to amend the complaint withdrawing their class claims on the remaining causes of action.

Alan Himmelfarb
KAMBEREDELSON LLP
2757 Leonis Blvd.
Los Angeles, CA 90058
(323) 585-8696
ahimmelfarb@kamberedelson.com

From: Quackenbush, Karl [mailto:kquackenbush@Riddellwilliams.com]
Sent: Saturday, November 21, 2009 6:26 PM
To: ahimmelfarb@kamberedelson.com
Cc: Casper, Chuck
Subject: Johnson et al v. Microsoft

Alan: We received your notice filed last night purporting to withdraw Plaintiffs' class certification motion. Please advise us of the reason for this notice. Microsoft believes Plaintiffs lack authority to withdraw their class certification motion unless they are withdrawing the class allegations in the Second Amended Consolidated Complaint. Please confirm that Plaintiffs withdraw their class allegations. Otherwise, on Monday Microsoft plans to ask the Court to proceed with oral argument on Plaintiffs' class certification motion on December 2, or, alternatively, order that the class allegations be stricken from the Second Amended Consolidated Complaint.

KARL J. QUACKENBUSH | RIDDELL WILLIAMS P.S.
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Exhibit B

Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Brian Johnson, et al, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

MICROSOFT CORPORATION,
a Washington corporation,

Defendant.

NO. CV 06-0900 RSM

PLAINTIFFS' ANSWERS TO

**DEFENDANT MICROSOFT
CORPORATION'S FIRST SET OF
INTERROGATORIES TO
PLAINTIFFS**

Plaintiffs hereby respond to Defendant Microsoft Corporation's First Set of
Interrogatories as follows:

GENERAL OBJECTIONS

1. Plaintiffs object to Defendant's Interrogatories to the extent they call for the
identification of documents or information unrelated to Plaintiffs' allegations on behalf of
the proposed class.

***PLAINTIFFS' ANSWERS TO
DEFENDANT'S FIRST SET OF
INTERROGATORIES TO PLAINTIFFS***

Case No. 06-CV-0900 RSM - 1

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(206) 682-3333

1 2. Plaintiffs object to Defendant's Interrogatories to the extent they call for
2 information protected by the attorney-client privilege and/or prepared in anticipation of
3 litigation and/or for trial preparation and as such are protected by the work product
4 doctrine.

5 3. Plaintiffs object to Defendant's Interrogatories to the extent they call for the
6 identification of documents or information not relevant to the subject matter of this action
7 and/or not reasonably calculated to lead to the discovery of admissible evidence.

8 4. Plaintiffs object to Defendant's Interrogatories to the extent that they are
9 vague and overbroad and/or sweeping, duplicative, and harassing, and therefore,
10 responding to them constitutes an overly burdensome and unnecessary undertaking.

11 5. Plaintiffs object to Defendant's Interrogatories to the extent that they call
12 for the identification of documents or information that contain confidential and/or
13 proprietary information.

14 6. Discovery and factual investigations are on-going in this matter. Plaintiffs
15 have not yet ascertained each fact or identified each document or witness supporting its
16 allegations. Plaintiffs reserve the right to rely upon additional facts, information, and
17 documents that may be discovered in connection with the proceeding, including
18 information that may be provided or produced by Defendant.

19 7. Plaintiffs object to Defendant's Interrogatories to the extent that they seek
20 information already within Defendant's possession, publicly available or otherwise
21 equally available to Defendant.

22 8. Plaintiffs' responses herein are based upon present knowledge, information,
23 and belief following their diligent search and reasonable inquiry. Discovery and
24 investigation are ongoing and Plaintiffs reserves their rights to produce evidence of any
25

26 ***PLAINTIFFS' ANSWERS TO***
DEFENDANT'S FIRST SET OF
INTERROGATORIES TO PLAINTIFFS
Case No. 06-CV-0900 RSM - 2

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1 subsequently discovered fact, to alter or amend its objections and responses set forth
2 herein, and otherwise to assert factual and legal contentions as additional facts are
3 ascertained, analyses are made, and legal research is completed. Plaintiffs objects to the
4 interrogatory requests insofar as they may be construed to limit or restrict Plaintiffs' right
5 to rely upon any information or document for any purposes whatsoever, including, but
6 not limited to, the use of information or responsive documents as evidence at any
7 subsequent hearing, trial, or other proceeding.
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*PLAINTIFFS' ANSWERS TO
DEFENDANT'S FIRST SET OF
INTERROGATORIES TO PLAINTIFFS*

Case No. 06-CV-0900 RSM - 3

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INTERROGATORIES

1
2
3 1. For each copy of WGA Validation and WGA Notifications software that
4 was installed on any of your computers, identify:

- 5 (i) the update service or other source from which the software was
6 downloaded (e.g., Windows Update Service);
7 (ii) the date on which the software was installed; and
8 (iii) the manufacturer and model number of the computer on which the
9 software was installed.

10 **ANSWER:**

- 11 (i) Plaintiffs obtained WGA through automatic updates,
12 (ii) On or about April 24, 2006 through June 26, 2006.

13 (iii) Plaintiff objects to the production of information which Microsoft could use
14 to uniquely identify Plaintiff's systems as belonging to Plaintiff, and install software on
15 Plaintiff's system which would not be installed on other systems which are not potential
16 class representatives. Plaintiff will not produce complete responses to this Interrogatory
17 until Microsoft provides adequate assurances that Plaintiffs' systems will not be singled
out for disparate treatment by Microsoft's update services.

18 **Nancy Auge**

19 Dell E510– Purchased November 2005

20 Dell Dimensions – Purchased February 2003 and June 2004.

21 **Brian Johnson**

22 Toshiba Laptop – Purchase 4 years ago.

23 **Edward Mifsud**

24 Dell E510 – Purchased November 2005

25 **David DiDomizio**

26 Dell Dim 5100C – Purchased August 2005

*PLAINTIFFS' ANSWERS TO
DEFENDANT'S FIRST SET OF
INTERROGATORIES TO PLAINTIFFS*

Case No. 06-CV-0900 RSM - 4

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1 **Martin Sifuentes**

2 Dell Inspiron 1150 - Purchased Feb. 2005

3 Dell Inspiron 600 M - Purchased approximately September 2004.

4 2. For each copy of Microsoft Windows XP software that you acquired
5 (including software acquired as a preinstalled component of a computer), identify:

- 6 (i) the retail dealer or other source from which you acquired the
7 software, including the address and telephone number of that retail
8 dealer or other source;
- 9 (ii) The date on which you acquired the software;
- 10 (iii) the date on which you activated the software; and
- 11 (iv) the manufacturer and model number of the computer on which the
12 software was installed.

13 **ANSWER:**

- 14 (i) **Nancy Auge** – Purchase from Dell Online.
15 Dell E 510 – Purchased November 2005
16 Dell Dimensions 4550 – Purchased February 2003
17 Dell Dimensions 4600 – Purchased June 2004

18 **Brian Johnson** – Purchased from Sysco Computers four years ago.

19 **Edward Mifsud** – Purchase from Dell Online
20 Dell E510 – Purchased November 2005

21 **David DiDomizio** – Purchased from Dell Online
22 Dell Dim 5100C – Purchased August 2005

23 **Martin Sifuentes** - Purchased directly from Dell

- 24 (ii) **Nancy Auge** - Acquired with the system.

25 **Brian Johnson** - Acquired with the system.

26 *PLAINTIFFS' ANSWERS TO
DEFENDANT'S FIRST SET OF
INTERROGATORIES TO PLAINTIFFS*

Case No. 06-CV-0900 RSM - 5

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1 The undersigned attorney for Plaintiff has read the foregoing Interrogatories and
2 responses and objections thereto, and states that they are in compliance with Rule 33(a).

3 DATED this 9th day of April, 2007.

4 SHORT CRESSMAN & BURGESS, PLLC

5
6 By: /s _____
7 David E. Breskin, WSBA No. 10607
8 William W. Houck, WSBA No. 13324

9 Attorneys for Plaintiff
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26 *PLAINTIFFS' ANSWERS TO*
DEFENDANT'S FIRST SET OF
INTERROGATORIES TO PLAINTIFFS
Case No. 06-CV-0900 RSM - 12

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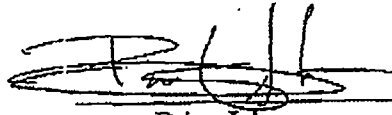
Law Offices
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SEATTLE, WASHINGTON 98104-4088
(206) 682-3333

Apr-11-07 08:50 From-

T-083 P.001/001 F-750

VERIFICATION

I, Brian Johnson, being first duly sworn, declare that I have read the foregoing Answers to Defendant Microsoft Corporation's First Set of Interrogatories to Plaintiffs, know the contents thereof, and believe the same to be true and correct.


Brian Johnson

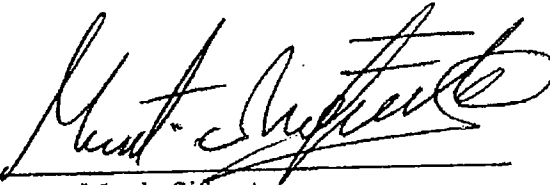
**PLAINTIFFS' ANSWERS TO
DEFENDANT'S FIRST SET OF
INTERROGATORIES TO PLAINTIFFS**

Case No. 06-CV-0900 RSM - 13
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SEATTLE, WASHINGTON 98104-4088
(206) 682-3333

VERIFICATION

I, Martin Sifuentes, being first duly sworn, declare that I have read the foregoing Answers to Defendant Microsoft Corporation's First Set of Interrogatories to Plaintiffs, know the contents thereof, and believe the same to be true and correct.



Martin Sifuentes

**PLAINTIFFS' ANSWERS TO
DEFENDANT'S FIRST SET OF
INTERROGATORIES TO PLAINTIFFS**

Case No. 06-CV-0900 RSM - 18

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(206) 682-3333

VERIFICATION

The undersigned, being first duly sworn, declares that he/she is the MANAGER of Engineered Process Controls, LLC, and authorized to sign on behalf of said company, has read the foregoing Answers to defendant Microsoft Corporation's First Set of Interrogatories to Plaintiffs, knows the contents thereof, and believes the same to be true and correct.

By: 

[Printed Name] EDWARD MITSUD

Its: MANAGER

*PLAINTIFF JOHNSON'S ANSWERS TO
DEFENDANT'S FIRST SET OF
INTERROGATORIES TO PLAINTIFFS*
Case No. 06-CV-0900 RSM - 10
608293.1/026324.00001

Law Offices
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999 THIRD AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98104-4088
(206) 682-3333

VERIFICATION

I, David DiDomizio, being first duly sworn, declare that I have read the foregoing Answers to Defendant Microsoft Corporation's First Set of Interrogatories to Plaintiffs, know the contents thereof, and believe the same to be true and correct.


David DiDomizio

*PLAINTIFF JOHNSON'S ANSWERS TO
DEFENDANT'S FIRST SET OF
INTERROGATORIES TO PLAINTIFFS*
Case No. 06-CV-0900 RSM - 13
608293.1/026324.00001

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Exhibit C

Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BRIAN JOHNSON, et al, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

MICROSOFT CORPORATION,
a Washington corporation,

Defendant.

NO. CV 06-0900 RAJ

PLAINTIFFS RESPONSES TO
MICROSOFT'S FIRST SET OF
INTERROGATORIES TO NEWLY ADDED
PLAINTIFFS

Plaintiffs Brian Weatherill ("Weatherill"), Nathan Verrilli ("Verrilli"), James Grennan ("Grennan"), and Charles Ellis ("Ellis") hereby respond to Defendant Microsoft Corporation's First Set Of Interrogatories To Newly Added Plaintiffs.

PLAINTIFFS RESPONSES TO MICROSOFT'S FIRST
SET OF INTERROGATORIES TO NEWLY ADDED
PLAINTIFFS
CASE NO. CV06_0900 RAJ

KamberEdelson, LLC
53 West Jackson Boulevard, Suite 1530
Chicago, Illinois 60604
Telephone: (312) 589-6370

GENERAL OBJECTIONS

1. Plaintiffs object to Defendant's Interrogatories to the extent they call for the identification of documents or information unrelated to Plaintiffs' allegations on behalf of the proposed class.

2. Plaintiffs object to Defendant's Interrogatories to the extent they call for information protected by the attorney-client privilege and/or prepared in anticipation of litigation and/or for trial preparation and as such are protected by the work product doctrine.

3. Plaintiffs object to Defendant's Interrogatories to the extent they call for the identification of documents or information not relevant to the subject matter of this action and/or not reasonably calculated to lead to the discovery of admissible evidence.

4. Plaintiffs object to Defendant's Interrogatories to the extent that they are vague and overbroad and/or sweeping, duplicative, and harassing, and therefore, responding to them constitutes an overly burdensome and unnecessary undertaking.

5. Plaintiffs object to Defendant's Interrogatories to the extent that they call for the identification of documents or information that contain confidential and/or proprietary information.

6. Discovery and factual investigations are on-going in this matter. Plaintiffs have not yet ascertained each fact or identified each document or witness supporting its allegations. Plaintiffs reserve the right to rely upon additional facts, information, and documents that may be discovered in connection with the proceeding, including information that may be provided or produced by Defendant.

7. Plaintiffs object to Defendant's Interrogatories to the extent that they seek information already within Defendant's possession, publicly available or otherwise equally

PLAINTIFFS RESPONSES TO MICROSOFT'S FIRST
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CASE NO. CV06_0900 RAJ

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1 available to Defendant.

2 8. Plaintiffs' responses herein are based upon present knowledge, information, and
3 belief following their diligent search and reasonable inquiry. Discovery and investigation are
4 ongoing and Plaintiffs reserve their rights to produce evidence of any subsequently discovered
5 fact, to alter or amend its objections and responses set forth herein, and otherwise to assert
6 factual and legal contentions as additional facts are ascertained, analyses are made, and legal
7 research is completed. Plaintiffs object to the interrogatory requests insofar as they may be
8 construed to limit or restrict Plaintiffs' right to rely upon any information or document for any
9 purposes whatsoever, including, but not limited to, the use of information or responsive
10 documents as evidence at any subsequent hearing, trial, or other proceeding.

11 INTERROGATORY RESPONSES AND OBJECTIONS

12 1. For each copy of WGA Validation and WGA Notifications software that was
13 installed on any of your computers, identify:

- 14 (i) the update service or other source from which the software was
15 downloaded (e.g., Windows Update Service);
16 (ii) the date on which the software was installed; and
17 (iii) the manufacturer and model number of the computer on which the
18 software was installed.

19 **ANSWER:**

20 Plaintiffs object to this interrogatory on the following grounds: The interrogatory is
21 vague and uncertain. During the class period, Microsoft caused many updates and many
22 versions of its various WGA programs to download onto the computers of all XP users who
23 utilized Microsoft's Update services. Further, Microsoft did so without proper notification or
24 consent. Further, Microsoft did not provide any apparent means to track or identify WGA
25 updates. In addition, Microsoft has not provided Plaintiffs with any clear means to ascertain the

26 PLAINTIFFS RESPONSES TO MICROSOFT'S FIRST
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CASE NO. CV06_0900 RAJ

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1 date of each download or even which version of WGA was downloaded onto any particular
 2 computer, or the means by which such a download occurred. Therefore, based upon the manner
 3 in which Microsoft elected to implement its download of these programs onto the computers of
 4 class members and specifically the computers of the named plaintiffs, this interrogatory is not
 5 capable of a specific or definitive response.

6 Without waiving any of the above-stated objections, given Microsoft's intentional lack of
 7 transparency with respect to its downloads of the WGA programs to the computers of XP users,
 8 Plaintiffs offer the following information, which comprise "apparent dates" as the best
 9 information available to plaintiffs:

10 **Weatherill:**

- 11 (i) Automatic Updates
- 12 (ii) 2006/04/26 (according to WGAlog)
- 13 (iii) Self-built

14 **Verrilli:**

- 15 (i) Automatic Updates
- 16 (ii) 6/2/2006
- 17 (iii) Compaq Presario 8000

18 **Grennan:**

- 19 (i)(a) Uncertain, but WGA Logon.dll reflects 4/2/2007
- 20 (ii)(a) 4/2/2007
- 21 (iii)(a) Self Built
- 22 (i)(b) Uncertain, but WGA Logon.dll reflects 3/21/07
- 23 (ii)(b) 3/21/07
- 24 (iii)(b) IBM 5-42 Thinkpad
- 25 (i)(c) Uncertain but WGA Logon.dll reflects 5/23/07
- 26 (ii)(c) 5/23/07 per WGA log
- (ii)(c) IBM R-16 Thinkpad

Ellis:

PLAINTIFFS RESPONSES TO MICROSOFT'S FIRST
 SET OF INTERROGATORIES TO NEWLY ADDED
 PLAINTIFFS
 CASE NO. CV06_0900 RAJ

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 Telephone: (312) 589-6370

- (i) Windows Updates
- (ii) Tuesday, March 14, 2006, 12:05:25 AM (according to WGA.log)
- (iii) Self-built

2. For each copy of Microsoft Windows XP software that you acquired (including software acquired as a preinstalled component of a computer), identify:

- (i) the retail dealer or other source from which you acquired the software, including the address and telephone number of that retail dealer or other source;
- (ii) The date on which you acquired the software;
- (iii) the date on which you activated the software; and
- (iv) the manufacturer and model number of the computer on which the software was installed.

ANSWER:

Weatherill:

- (i) CompUSA
- (ii) On or around Q1:2003
- (iii) On or around Q1:2003
- (iv) Home-built

Verrilli:

- (i) Compac (online)
- (ii) On or around 6/2/2006
- (iii) On or around 6/2/2006
- (iv) Compaq Presario 8000

Grennan:

- (i)(a) None – self built from parts
- (ii)(a) Unknown – Approximately June 2006
- (iii)(a) Uncertain, but WGA Longon.dll reflects 4/2/2007
- (iv)(a) Self-built

PLAINTIFFS RESPONSES TO MICROSOFT'S FIRST
SET OF INTERROGATORIES TO NEWLY ADDED
PLAINTIFFS
CASE NO. CV06_0900 RAJ

KamberEdelson, LLC
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- (iii) the compensation paid or to be paid for any study, report, or testimony;
and
(iv) a listing of all cases in which the expert has testified as an expert at a trial,
hearing or by deposition, declaration or affidavit.

ANSWER: Plaintiffs have not yet identified expert witnesses.

Objections and Answers dated this 30th day of April, 2008.

KamberEdelson, LLC

By /s/
Alan Himmelfarb

Jess G. Webster (Wa. Bar No. 11402)
Mikkelborg Broz Wells & Fryer PLLC
Jess G. Webster (WA. Bar No. 11402) Mitchell
A. Broz (WA. Bar No. 17095)
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David Breskin (Wa. Bar No. 10607)
BRESKIN JOHNSON & TOWNSEND PLLC
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William W Houck (WA. Bar No. 13324)
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Telephone: (425) 392-711

*Counsel for Engineered Process Controls LLC,
and Martin Sifuentes*

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11 Broadway, 22nd Floor.
New York, NY. 10004
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Ethan Preston
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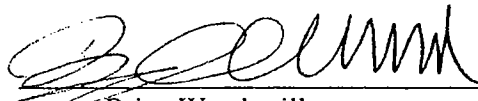
1 Chicago, Illinois 60604
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4 *Counsel for Brian Johnson, Brian Weatherill,*
Nathan Verrilli, James Grennan, Gary Mercer,
and Charles Ellis.

26 PLAINTIFFS RESPONSES TO MICROSOFT'S FIRST
SET OF INTERROGATORIES TO NEWLY ADDED
PLAINTIFFS
CASE NO. CV06_0900 RAJ

KamberEdelson, LLC
53 West Jackson Boulevard, Suite 1530
Chicago, Illinois 60604
Telephone: (312) 589-6370

1 **VERIFICATION**

2 I, Brian Weatherill, being first duly sworn, declare that I have read the foregoing
3 Answers to Defendant Microsoft Corporation's First Set of Interrogatories to Newly Added
4 Plaintiffs, know the contents thereof with respect to those responses that are attributable to me,
5 and believe the same to be true and correct.
6

7
8 
9

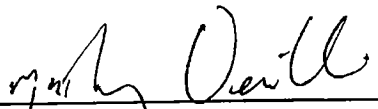
10 Brian Weatherill
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26 PLAINTIFFS RESPONSES TO MICROSOFT'S FIRST
SET OF INTERROGATORIES TO NEWLY ADDED
PLAINTIFFS
CASE NO. CV06_0900 RAJ

KamberEdelson, LLC
53 West Jackson Boulevard, Suite 1530
Chicago, Illinois 60604
Telephone: (312) 589-6370

VERIFICATION

I, Nathan Verrilli, being first duly sworn, declare that I have read the foregoing Answers to Defendant Microsoft Corporation's First Set of Interrogatories to Newly Added Plaintiffs, know the contents thereof with respect to those responses that are attributable to me, and believe the same to be true and correct.



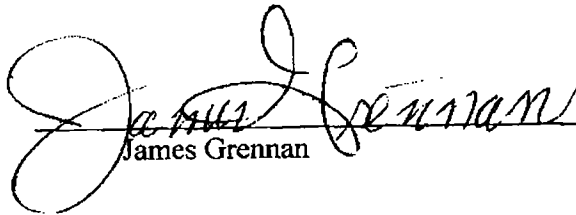
Nathan Verrilli

PLAINTIFFS RESPONSES TO MICROSOFT'S FIRST
SET OF INTERROGATORIES TO NEWLY ADDED
PLAINTIFFS
CASE NO. CV06_0900 RAJ

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Chicago, Illinois 60604
Telephone: (312) 589-6370

VERIFICATION

I, James Grennan, being first duly sworn, declare that I have read the foregoing Answers to Defendant Microsoft Corporation's First Set of Interrogatories to Newly Added Plaintiffs, know the contents thereof with respect to those responses that are attributable to me, and believe the same to be true and correct.

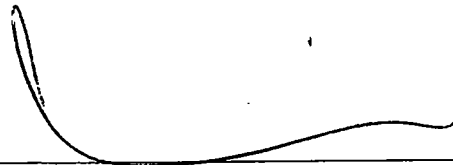

James Grennan

PLAINTIFFS RESPONSES TO MICROSOFT'S FIRST
SET OF INTERROGATORIES TO NEWLY ADDED
PLAINTIFFS
CASE NO. CV06_0900 RAJ

KamberEdelson, LLC
53 West Jackson Boulevard, Suite 1530
Chicago, Illinois 60604
Telephone: (312) 589-6370

VERIFICATION

I, Charles Ellis, being first duly sworn, declare that I have read the foregoing Answers to Defendant Microsoft Corporation's First Set of Interrogatories to Newly Added Plaintiffs, know the contents thereof with respect to those responses that are attributable to me, and believe the same to be true and correct.



Charles Ellis

PLAINTIFFS RESPONSES TO MICROSOFT'S FIRST
SET OF INTERROGATORIES TO NEWLY ADDED
PLAINTIFFS
CASE NO. CV06_0900 RAJ

KamberEdelson, LLC
53 West Jackson Boulevard, Suite 1530
Chicago, Illinois 60604
Telephone: (312) 589-6370

Exhibit D

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF WASHINGTON
3 AT SEATTLE

4 BRIAN JOHNSON, et al.,)
5 Plaintiffs,)

6 vs.)

No. C06-0900RSM

7 MICROSOFT CORPORATION,)
8 Defendant.)
9 _____)

10
11
12
13
14
15 DEPOSITION OF BRIAN JOHNSON

16 Los Angeles, California

17 Thursday, September 27, 2007

18
19
20
21
22
23 Reported by:

24 MARYAM T. SALAHUD-DIN

CSR No. 9669

25 Job No. 660170

Page 106

1 Q And you see that it is dated the 29th day of
2 May of 2007. Do you see that?
3 A Yes.
4 Q Now flip two more pages. And do you see a
5 document there that is headed verification?
6 A Yes.
7 Q Okay. Now, underneath that it says, "I, Brian
8 Johnson, being first duly sworn, declare that I have
9 read the foregoing Answers to Defendant Microsoft
10 Corporation's First Set of Interrogatories to
11 Plaintiffs, know the contents thereof, and believe the
12 same to be true and correct."
13 Do you see that?
14 A Yes.
15 Q And is that your signature?
16 A Yes.
17 Q Okay. Now, if you look in the footer, it says
18 "Plaintiff's Answers to Defendant's First Set of
19 Interrogatories to Plaintiffs." Do you see that?
20 A Yes.
21 Q Now, if you flip two pages before that. And
22 you see that is signed by an attorney there?
23 A Yes.
24 Q Now, in the footer of that document, it says
25 Plaintiff's Supplemental Answers to Defendant's First

Page 107

1 Set of Interrogatories to Plaintiffs. Do you see that?
2 A Yes.
3 Q Now, let's flip back to the verification that
4 you signed. When you signed this document, were you
5 verifying that the answers that are contained in this
6 document were true and correct to the best of your
7 knowledge?
8 A Yes.
9 Q Can you turn to page 4. And at the top it says
10 "Interrogatories." Do you see that?
11 A Yes.
12 Q The first interrogatory says, "For each copy of
13 WGA Validation and WGA Notification software that was
14 installed on any of your computers, identify: (i), the
15 update service or other source from which the software
16 was downloaded."
17 Do you see that?
18 A Yes.
19 Q Now, beneath it, it says answer to number one.
20 And it says, "Plaintiffs obtained WGA through automatic
21 updates." Do you see that?
22 A Yes.
23 Q Is that accurate?
24 A Yes.
25 Q Did you also obtain WGA through Windows

Page 108

1 update?
2 A Yes.
3 Q Then why didn't you --
4 A I'm sorry. I'm sorry. The Windows update
5 being the automatic update. I did not download WGA on
6 my own. It came with the automatic at a time.
7 Q Number one says, the answer, "Plaintiffs
8 obtained WGA through automatic updates." Do you see
9 that?
10 A Yes.
11 Q Is that accurate?
12 A Yes.
13 Q Did you also obtain WGA through Windows update?
14 A No.
15 Q You did not obtain WGA through Windows update?
16 A Automatic updates and Windows update, are they
17 different?
18 Q Do you know what a Windows update is?
19 A Yes.
20 Q Tell me.
21 A Automatic update comes along with Windows
22 update. Once you do that, my understanding is it goes
23 through the Windows update site and downloads those
24 files for you. That is my understanding.
25 Q Okay. Have you ever visited the Windows update

Page 109

1 Web site?
2 A Yes.
3 Q How did you do that?
4 A Went to start Windows update.
5 Q Did you click on your Internet browser and then
6 go to a Web page for Windows update?
7 A I went to start Windows update. It is a
8 shortcut on the system.
9 Q Okay. And were you connected to the Internet?
10 A Yes.
11 Q Did you use your browser to get there?
12 A Yes.
13 Q And you were on a Web page?
14 A Yes.
15 Q While you were on that Web page, did you ever
16 download any software?
17 A Yes.
18 Q Did you ever download WGA from that Web page?
19 A No.
20 Q Never?
21 A Not that I chose to do that, no.
22 Q Did you ever obtain Windows Genuine Advantage
23 from that Web site?
24 A Through automatic updates.
25 Q That is not my question.

Page 110

1 My question is, when you visited the Windows
2 update Web site, did you ever obtain Windows Genuine
3 Advantage?
4 A No.
5 Q Excuse me?
6 A No. I did not click on it to download it.
7 Q That is not my -- I'm not asking if you clicked
8 to download. I'm asking you, when you visited the
9 Windows update Web page, did you ever obtain WGA from
10 that Web site?
11 A The way I got Windows WGA was through automatic
12 updates.
13 Q Forget about where automatic updates pulls
14 updates from because I'm not asking that.
15 What I'm trying to understand is if -- putting
16 aside automatic update, if you ever obtained WGA
17 directly from the Windows update. Okay. That is what I
18 want to understand. Let me ask you my question.
19 When you visited the Windows update Web site,
20 did you ever obtain WGA from that Web site?
21 A No.
22 Q Now, earlier I think you testified that you
23 did. Is your earlier testimony incorrect?
24 A My earlier testimony was based on the
25 assumption that Windows automatic update, going to that

Page 111

1 Web site. And that is what I said then, and that is
2 what I stand by now.
3 Q From here and after, when I refer to Windows
4 update, I'm going to be referring to instances where you
5 visited that Web site and obtained downloads. Do you
6 understand that?
7 A I do understand that now.
8 Q Now, let me go back to your interrogatories.
9 Interrogatory No. 1 says, "For each copy of WGA
10 Validation and WGA Notification software that was
11 installed on any of your computers, identify: (i), the
12 update service or other source from which the software
13 was downloaded."
14 Do you see that?
15 A I do see that.
16 Q The answer to number one says, "Plaintiffs
17 obtained WGA through automatic updates."
18 Do you see that?
19 A Yes.
20 Q Is that answer correct with respect to you?
21 A Yes.
22 Q Is that answer complete with respect to you?
23 A Yes.
24 Q Okay. Okay. Now, part two of interrogatory
25 No. 1 says, "For each copy of WGA validation and WGA

Page 112

1 notification software that was installed on any of your
2 computers, identify: the date on which the software was
3 installed."
4 Do you see that?
5 A Yes.
6 Q Now, the answer to No. 2 says, "On or about
7 April 24th, 2006 through June 26, 2006."
8 Do you see that?
9 A Yes.
10 Q How do you know that Windows Genuine Advantage
11 was installed on one of your computers between that time
12 frame?
13 A I sent a WGA log, and my assumption is that was
14 in that log.
15 Q Could you repeat that answer.
16 A I sent a WGA log to my attorney, and I believe
17 that it was in that log.
18 Q What do you mean a WGA log?
19 A A file that says WGA log which you were asking
20 for. That file was sent to my attorney.
21 Q When did you send that to your attorney?
22 A They requested it. It was before June of
23 2006. Or I'm sorry. Before this date. Shortly after
24 we started going through the -- when he started
25 collecting data. I'm not exactly sure when that was.

Page 113

1 Q Tell me what the log looked like?
2 A I didn't look at the log. I just sent the
3 file.
4 Q Was there anything on the log that lead you to
5 believe that you obtained WGA between April 24th, 2006
6 and June 26, 2006?
7 A I didn't look at the log. I sent the file.
8 Q Well, how did you verify that this answer was
9 true and correct and to the best of your ability if you
10 had no basis for concluding that?
11 A Through my communications with my attorney.
12 Q So are you testifying that it is your attorney
13 who wrote this answer?
14 A I'm testifying, based on the files that I sent
15 to him, yes.
16 Q Did you have any basis for answering this
17 question to say that you obtained WGA between April
18 24th, 2006 and June 26, 2006?
19 A Based on my conversation with my attorney, yes.
20 Q Other than conversations with your attorney,
21 did you have any other basis for answering the question
22 this way?
23 A No.
24 Q Do you know where that document is now?
25 A I assume my attorney still has it.

29 (Pages 110 to 113)

Page 194

1 downloads. Windows update. Excuse me.

2 And I did see a document that my attorney
3 showed me.

4 Q Okay. So let me address -- you said that one
5 of the places that you saw it was in the automatic
6 updates feature. What did you see specifically?

7 A When it downloads your priority updates, it
8 shows you what was installed as a priority update.

9 Q When did you see that?

10 A When I downloaded it.

11 Q Both times?

12 A Yes.

13 Q Okay. And you said you also saw
14 representations about high priority updates on the
15 Windows updates Web site?

16 A Yes. When I declined initially the WGA, I went
17 to the Microsoft Windows update, tried to install the
18 updates that I deemed necessary -- or excuse me --
19 Microsoft said were necessary to run my computer at the
20 optimum settings that I needed. I tried to download
21 those priority updates there. And I saw a list of
22 priority versus optional.

23 Q And on that list, was WGA listed as a high
24 priority update?

25 A If I recall correctly, yes.

Page 195

1 Q Do you remember any of the downloads that you
2 wanted and required you to install WGA?

3 A I do remember Windows Media Player. I don't
4 remember whether it was 10 or 11.

5 Q Anything else?

6 A I believe Windows Defender. And I believe it
7 was -- I can't remember the exact name. But I think it
8 was Windows virus remover or something like that. Those
9 are the only three I can recall. I believe there are
10 some others, but I cannot recall.

11 Q And do you believe that those three downloads
12 were essential to making your computer run properly?

13 A Yes.

14 Q Okay. Now, the last item that you mentioned
15 about seeing disclosures about high priority updates was
16 a document that your attorney showed you. Can you tell
17 me what document that was.

18 A It was a printout off the Microsoft Web site.

19 Q Had you ever seen it before?

20 A As I stated, when I went to the Microsoft Web
21 site earlier, yes, I had seen those or similar
22 documents. I'm not sure exactly if they were the same
23 documents because Microsoft is good about updating their
24 Web site.

25 Q When did your attorney show you this document?

Page 196

1 A Yesterday.

2 Q Do you know if the document was produced to
3 Microsoft?

4 A It was produced from Microsoft. So when he
5 printed it off of Microsoft's Web site, I'm pretty sure
6 that Microsoft had it, but I'm not certain.

7 Q Did you ever see any representations that WGA
8 was a security-related update?

9 A I don't recall seeing anything like that.

10 Q Do you ever recall seeing anything that said
11 WGA was an important update?

12 A No.

13 (Defendant's Exhibit 17 marked.)

14 BY MR. HAUCK:

15 Q Okay. I have put in front of you a document
16 that is marked as Exhibit 17. And as you can see, it is
17 a group of documents with exhibit letters A through L.
18 Do you see that?

19 A Yes.

20 Q Can you flip to Exhibit A.

21 A Okay.

22 Q There is actually some documents before
23 Exhibit A. The second page says attachment A on the
24 bottom. Do you see that?

25 A Yes.

Page 197

1 Q Those appear to be a printout of the Microsoft
2 update Web site. Do you see that?

3 A Yes.

4 Q Have you ever seen this page before?

5 A Yes.

6 Q You have?

7 A Yes.

8 Q Can you flip to attach B. Now, this appears to
9 show the download installation of WGA through the
10 Microsoft update Web site. Have you ever seen this page
11 before?

12 A I believe I have seen this page before.

13 Q Okay. And how is that?

14 A I'm around a lot of computers.

15 Q Okay. Have you ever seen it in connection with
16 the installation of WGA on one of your computers?
17 A No.

18 Q I think you told me earlier that you never
19 obtained WGA through the Microsoft update Web site on
20 one of your computers; correct?

21 A Correct.

22 Q Can you flip to Exhibit A, which there is a
23 letter A tab in the document pack. And there is a
24 document that is headed "Description of the standard
25 terminology that is used to describe Microsoft software

Page 214

1 A I remember it because the Service Pack 2 is
 2 installed on my computer.
 3 Q Can you direct your attention to paragraph 6.
 4 A Yes.
 5 Q The next sentence says, "I update my computer
 6 regularly." Do you see that?
 7 A Yes.
 8 Q What do you mean by that sentence?
 9 A The last part of the last sentence says, I had
 10 my computer set to automatic updates, meaning that every
 11 time Microsoft came out with an update, I assumed it was
 12 going to be relevant so my computer would work better.
 13 So I made sure that that was possible.
 14 Q Other than through automatic updates, is there
 15 any other way that you update your computer regularly?
 16 A If Acrobat Reader comes out with a new version,
 17 I update that.
 18 Q Is there any other ways that you update your
 19 computer regularly with respect to Microsoft software?
 20 A No.
 21 Q Let me direct your attention to paragraph 8.
 22 It says, "I was not given an opportunity to accept or
 23 refuse the download and installation of this new WGA
 24 Validation program during that time period."
 25 Do you see that?

Page 215

1 A Yes.
 2 Q And I think you testified earlier that you
 3 could have declined the WGA EULA; correct?
 4 A Yes.
 5 Q So what do you mean in paragraph 8 that you
 6 were not given an opportunity to refuse WGA?
 7 A It was my -- for example, it actually installs
 8 and then prompts, do you want to accept it or not if I
 9 remember correctly.
 10 Q You think it was installed before the end user
 11 license agreement was presented to you?
 12 A If I remember correctly. But yea or nay, I
 13 didn't have a choice. I don't remember exactly. And if
 14 I find the document, I'm sure I can read you what order
 15 it was installed in. But I can't recall correctly. I
 16 can't recall exactly.
 17 Q What do you mean that you didn't have a choice?
 18 A If I don't accept it, I can't install what I
 19 need. So the choices are limited. If I don't accept
 20 the EULA, I can't install a product that I have paid
 21 for. So I'm paying for something up front.
 22 And then you are going to ask me yes or no
 23 after I had paid for it, you know. If I say no, I can't
 24 take the software back and say, I don't want it. So it
 25 is -- I'm out of pocket.

Page 216

1 Q You could have declined the EULA; correct?
 2 A Not if I wanted the software.
 3 Q But assuming that you didn't want the software,
 4 you could have declined the EULA; correct?
 5 A Yes, I could have.
 6 Q If you had declined the EULA, would WGA have
 7 been installed on your computer?
 8 A For Service Pack 2? Were we talking about
 9 Service Pack 2 earlier? Are we going back to WGA now?
 10 Q Paragraph 2 is talking about WGA. So let me
 11 stick with WGA.
 12 If you had declined -- strike that.
 13 If you had declined the WGA EULA, would WGA
 14 have been installed on your Toshiba laptop?
 15 A My assumption is no.
 16 Q Now, earlier you said that you thought WGA was
 17 installed before you had the opportunity to accept the
 18 EULA; is that right?
 19 A That is right.
 20 Q Can you reconcile those two statements.
 21 A My assumption and my understanding, both of
 22 them are kind of vague, I think, but I'm not sure -- I
 23 did state this before. I'm not sure of the order that
 24 it happened. The only thing I know is that I had to
 25 accept the EULA in order to get what I needed to get.

Page 217

1 So I'm not sure. I don't know is the answer.
 2 Q Do you know one way or another whether WGA was
 3 installed before the EULA was presented to you?
 4 A That is what I just said. I did not know the
 5 order.
 6 Q I would like to direct your attention to
 7 paragraph 9. It says, "The WGA Validation program took
 8 up space on my hard drive." Do you see that?
 9 A Yes.
 10 Q Do you have any idea how much space it took
 11 up?
 12 A 400K perhaps. A couple of hundred kilobytes
 13 perhaps.
 14 Q Would that have affected the performance of the
 15 computer?
 16 A It would not have affected the hard drive usage
 17 on the computer, no.
 18 Q The next sentence says, "This program also
 19 consumed memory when it was operating." Do you see
 20 that?
 21 A Yes.
 22 Q Do you know how much memory it consumed?
 23 A I do not know.
 24 Q What is your basis for that statement?
 25 A Any program that is operating on your system

55 (Pages 214 to 217)

Exhibit E

Martin Sifuentes 9/17/07

Page 102	Page 104
<p>1 you were asked to turn on Automatic Updates you declined?</p> <p>2 A. Correct.</p> <p>3 Q. And have you ever changed those settings?</p> <p>4 A. No.</p> <p>5 Q. For either machine?</p> <p>6 A. No, because I'm opposed to it. I'm trying to explain to you</p> <p>7 how a computer runs clean and I -- I'm almost religious for</p> <p>8 that. I like my computer clean.</p> <p>9 Q. Are you familiar with Windows Update?</p> <p>10 A. I know Windows ask you for an update. That's my familiarity</p> <p>11 with it.</p> <p>12 Q. Are you familiar with a website called Windows Update where</p> <p>13 you can go and update your version of Windows?</p> <p>14 A. Yes.</p> <p>15 Q. And have you ever done that?</p> <p>16 A. No.</p> <p>17 Q. Are you familiar with Microsoft Update?</p> <p>18 A. No.</p> <p>19 Q. Have you ever visited the Microsoft Update site?</p> <p>20 A. No.</p> <p>21 Q. Have you ever downloaded any programs from the Windows,</p> <p>22 Microsoft download center?</p> <p>23 A. No.</p> <p>24 Q. You didn't download Internet Explorer ??</p> <p>25 A. Same Internet Explorer that came with the machine is the one</p>	<p>1 of the amended complaint, which is Exhibit-4.</p> <p>2 A. 10 is the one we just read?</p> <p>3 Q. Right. The last sentence says, "WGA is now installed and</p> <p>4 operating on his computer," his referring to yours; is that</p> <p>5 right?</p> <p>6 A. That's correct. We found WGA there.</p> <p>7 Q. All right. And is this reference to which of those, of your</p> <p>8 two computers?</p> <p>9 A. Both.</p> <p>10 Q. This is to both?</p> <p>11 A. That's right.</p> <p>12 Q. I see. And how did WGA get installed on your computer?</p> <p>13 A. I have no idea.</p> <p>14 Q. You don't know?</p> <p>15 A. No.</p> <p>16 Q. You know it didn't come through Automatic Updates because you</p> <p>17 didn't turn it on, right?</p> <p>18 A. Because I don't update.</p> <p>19 Q. Let's look at this document and see.</p> <p>20 A. Can I -- I drank three glasses of water.</p> <p>21 Q. Sure.</p> <p>22 (Recess 12:09-12:14.)</p> <p>23 (Exhibit No. 5 marked</p> <p>24 for identification.)</p> <p>25 BY MR. QUACKENBUSH:</p>
Page 103	Page 105
<p>1 you're going to find today.</p> <p>2 Q. You didn't download Windows Defender?</p> <p>3 A. Nothing. I don't download period, other than drawings or,</p> <p>4 you know, messages. Even those I weed out before I open</p> <p>5 them.</p> <p>6 Q. The lawsuit that you filed against Microsoft, both the</p> <p>7 original complaint and the amended complaint, relate to WGA;</p> <p>8 is that right?</p> <p>9 A. Relate to invasion of my property, trespassing I think is</p> <p>10 what you call it here, at the software level. Come through</p> <p>11 the net, a cable hooked up to my computer. Somebody comes</p> <p>12 and makes himself home in my computer and the computer</p> <p>13 operates to the wishes of the invader and not to mine. I</p> <p>14 don't even know why it's there. What it reads, what it asks</p> <p>15 or what it doesn't so. So the fact it's there, so that's why</p> <p>16 I'm here. I like to keep my machine clean and I don't want</p> <p>17 anybody inviting themselves to it.</p> <p>18 Q. Well, let's look --</p> <p>19 A. In this case Microsoft. I don't want Microsoft to put</p> <p>20 problems that I don't desire on my computer without my</p> <p>21 authorization. That's why I'm here.</p> <p>22 Q. As I understand your testimony, you didn't voluntarily</p> <p>23 download anything from Microsoft; is that right?</p> <p>24 A. That's correct. I don't download, period.</p> <p>25 Q. You don't download, period. And take a look at paragraph 10</p>	<p>1 Q. Mr. Sifuentes, the court reporter has placed Exhibit-5 in</p> <p>2 front of you which is Plaintiff's Supplemental answers to</p> <p>3 Microsoft Corporation's First Set of Interrogatories to</p> <p>4 Plaintiffs. These were received by us in May of this year.</p> <p>5 And first thing I want you to do is just turn to the page</p> <p>6 numbered 16.</p> <p>7 A. There are two page 16, one with my signature and one without.</p> <p>8 Q. I want to look at the one with your signature and confirm</p> <p>9 that's your signature?</p> <p>10 A. That's correct, that's me.</p> <p>11 Q. And on the page numbered 19?</p> <p>12 A. Yeah, that's my signature.</p> <p>13 Q. So you signed these in your individual capacity and also on</p> <p>14 behalf of Univex; is that right?</p> <p>15 A. That's correct.</p> <p>16 Q. Did you understand what this verification was when you signed</p> <p>17 it?</p> <p>18 A. Yeah, I asked David explain it to me. I couldn't repeat it</p> <p>19 but I understood when I signed it.</p> <p>20 Q. So you understand that you're verifying that at least as far</p> <p>21 as you know, that the answers to the written questions are</p> <p>22 correct?</p> <p>23 A. Correct.</p> <p>24 Q. And you reviewed this document before you signed it I take</p> <p>25 it?</p>

27 (Pages 102 to 105)

Martin Sifuentes 9/17/07

Page 114	Page 116
<p>1 go to your computer and you do Explorer --</p> <p>2 Q. Why is this date listed as a range then? Why isn't it just</p> <p>3 the date that you saw?</p> <p>4 A. I don't know.</p> <p>5 Q. You don't know?</p> <p>6 A. Don't know.</p> <p>7 Q. Look at the second page.</p> <p>8 A. Second page.</p> <p>9 Q. There's a question about --</p> <p>10 A. Page 5 you mean?</p> <p>11 Q. Yeah, sorry. There's a question about the manufacturer and</p> <p>12 model number of the computer and there's a list of the</p> <p>13 various computers that the plaintiffs have.</p> <p>14 A. Yeah, for each copy of Microsoft Windows XP software that you</p> <p>15 acquire including software acquired --</p> <p>16 MR. HOUCK: I think he's looking up</p> <p>17 above.</p> <p>18 A. I'm trying to see where we're at. I think you are on No. 2,</p> <p>19 right?</p> <p>20 Q. No. 1.</p> <p>21 A. Oh, you're still on No. 1. Sorry, I moved to No. 2. All</p> <p>22 right. I'm back to No. 1.</p> <p>23 MR. HOUCK: But I think he's on the</p> <p>24 second page.</p> <p>25 A. Of No. 1. Ed, David, Martin supplemental response</p>	<p>1 A. Yes.</p> <p>2 Q. They're not owned by you, they're owned by a company?</p> <p>3 A. Yes.</p> <p>4 Q. Have you purchased a -- did you purchase extended warranties</p> <p>5 for these when you bought them?</p> <p>6 A. No.</p> <p>7 Q. You did not, okay. So you went through -- when you went</p> <p>8 through the authorization process when you first got these</p> <p>9 you said no to Automatic Updates, right?</p> <p>10 A. Yes.</p> <p>11 Q. Were you asked if you wanted to update Windows at that time?</p> <p>12 A. No.</p> <p>13 Q. You were not, okay. Have you ever gone to the Microsoft</p> <p>14 website to research Windows Update?</p> <p>15 A. No.</p> <p>16 Q. Have you ever gone to the website to research Microsoft</p> <p>17 Update?</p> <p>18 A. No.</p> <p>19 Q. Have you ever gone to the Microsoft website to research</p> <p>20 Automatic Updates?</p> <p>21 A. No.</p> <p>22 Q. Have you ever done any other research on the Microsoft</p> <p>23 website about Automatic Updates?</p> <p>24 A. No.</p> <p>25 Q. And as far as you know, you've never visited the Microsoft</p>
Page 115	Page 117
<p>1 engineering, Univex by Johnson.</p> <p>2 Q. All right. So up above the 1150 machine and the 600 machine</p> <p>3 are listed, right?</p> <p>4 A. Uh-huh.</p> <p>5 Q. Under Martin Sifuentes?</p> <p>6 A. Uh-huh.</p> <p>7 Q. And down below here the same two machines are listed under</p> <p>8 Univex Inc.?</p> <p>9 A. That's correct.</p> <p>10 Q. So who owns those machines?</p> <p>11 A. Univex Inc.</p> <p>12 Q. Did Univex Inc. purchase those machines?</p> <p>13 A. Yes.</p> <p>14 Q. And Martin Sifuentes did not?</p> <p>15 A. Martin Sifuentes owns Univex, so same thing. If I buy for</p> <p>16 Univex and Univex buys it, it's a Univex machine.</p> <p>17 Q. Make sure you understand my question. There's a company</p> <p>18 called Univex, correct?</p> <p>19 A. Yes.</p> <p>20 Q. Which is a separate entity and then there's a person named</p> <p>21 Martin Sifuentes. That's you, correct?</p> <p>22 A. Correct.</p> <p>23 Q. And these computers are owned by Univex?</p> <p>24 A. Correct.</p> <p>25 Q. So Univex bought them?</p>	<p>1 update site or the Windows update site?</p> <p>2 A. That's correct. I have never visited those Microsoft</p> <p>3 websites.</p> <p>4 Q. And as far as you know, you haven't downloaded anything from</p> <p>5 the Microsoft download site?</p> <p>6 A. That's correct.</p> <p>7 MR. QUACKENBUSH: Okay. Why don't we</p> <p>8 take a lunch break. Be back in an hour.</p> <p>9 MR. HOUCK: Sure.</p> <p>10 (Lunch Recess 12:30.)</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

30 (Pages 114 to 117)

Exhibit F

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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) Case No.
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) CV06-0900 RSM
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Reported by:
Mary W. Miller, CCR, RPR
CCR No. 2653
Job No. 660124

David DiDomizio 9/24/07

<p style="text-align: right;">Page 66</p> <p>1 Q. Sorry. Yes, the answer is no, you didn't go back and change 2 the settings? 3 A. I did not go back and change the settings. 4 Q. So as far as you knew, it was doing whatever it did without 5 any intervention by you? 6 A. Yes. 7 Q. Did you ever update your copy of Windows by going to the 8 Microsoft Windows update site? 9 A. I never went to the site on my own. I only took the updates 10 that would have come in. 11 Q. That's my question, but I didn't ask it very well. Are you 12 aware that Microsoft maintains a separate web page called 13 Windows Update? 14 A. I'm aware of it. 15 Q. And are you aware that that's another way to get updates, is 16 to affirmatively go to that site through your Internet 17 browser and update your copy of Windows? 18 MR. HOUCK: Object to the form of the 19 question. 20 A. I understand that currently. 21 Q. But you haven't done that? 22 A. No. 23 Q. Same question with regard to the Microsoft Update site. Have 24 you ever gone to the Microsoft Update site to manually update 25 your copy of Windows?</p>	<p style="text-align: right;">Page 68</p> <p>1 Q. Have you ever reviewed the -- 2 A. Let me rephrase my answer to that. I don't believe there's 3 someone on the other end taking control of my computer, but 4 it does take control of the computer when it does its update. 5 I can't do much else. 6 Q. So you're referring to -- in your case you're referring to 7 Automatic Updates? 8 A. Automatic Updates. 9 Q. So what is it about Automatic Updates that you think 10 constitutes taking control of your computer? 11 A. When it asks you you have to restart and it starts counting 12 down the number of seconds or minutes till it wants to 13 restart itself. 14 Q. I'm sorry, are these these update notifications that you 15 refer to? 16 A. Sometimes they'll say your computer's been updated and needs 17 to restart now. You have four minutes and 45 seconds to 18 restart. Restart now or later and you work for a little 19 while and it comes back up. 20 Q. So it asks you if you want to restart your computer? 21 A. Correct. 22 Q. And gives you an option to say yes or no? 23 A. Yes. 24 Q. And as I understand your testimony, you either say yes or no 25 depending on how busy you are?</p>
<p style="text-align: right;">Page 67</p> <p>1 A. No. 2 Q. Have you ever downloaded any of the free programs that are 3 available on the Windows Update site? 4 A. No. 5 Q. What about Microsoft Update, same question. Have you 6 downloaded any programs from Microsoft Update? 7 A. No. 8 Q. Have you ever gone online and reviewed the Microsoft privacy 9 statement? 10 A. I don't believe I have. 11 Q. Are you running Internet Explorer as your web browser? 12 A. Yes. 13 Q. What version? 14 A. I don't know. 15 Q. Do you use Windows Media Player? 16 A. No. 17 Q. What about Windows Defender? 18 A. No. At least not that I know of, unless it happens 19 automatically. 20 Q. As far as you know, you haven't gone out and downloaded 21 Windows Defender? 22 A. Correct. 23 Q. Do you think that Microsoft has used WGA to take control of 24 your computer? 25 A. No.</p>	<p style="text-align: right;">Page 69</p> <p>1 A. Yes. You don't have to say yes. If you don't say anything, 2 it will go ahead and do it. 3 Q. Understood. You have to say do it later or remind me later? 4 A. Right. 5 Q. And you think that's a notification that comes up when 6 updates have been installed? 7 A. That's what it appears to be. 8 Q. Have you ever gone to a Microsoft knowledge based article to 9 read the instructions about how to uninstall WGA? 10 A. No. 11 Q. Do you know how to print a directory listing from your 12 computer? 13 A. I don't know, but I could probably figure it out. 14 MR. QUACKENBUSH: Let's take a quick 15 break. 16 (Recess 11:22 a.m.-11:38 a.m.) 17 (Exhibit No. 6 marked 18 for identification.) 19 Q. Exhibit-6 is a copy of Plaintiffs' Responses to Defendant's 20 Second Set of Request For Production of Documents. This is 21 dated August 3rd of 2007. I'd like to direct your attention, 22 Mr. DiDomizio, to page 4. Page 4 in the middle says, 23 "Attached as Exhibit-A is the WGA notify.log file for David 24 DiDomizio and Engineered Process Control, LLC." Do you see 25 that?</p>

18 (Pages 66 to 69)

Exhibit G

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BRIAN JOHNSON, et al.

Plaintiffs

vs.

Case No. CV-06-0900-RAJ

MICROSOFT CORPORATION,
a Washington corporation

Defendant.

DEPOSITION OF JAMES GRENNAN
TAKEN ON BEHALF OF THE DEFENDANT
ON JULY 9, 2008, BEGINNING AT 8:36 A.M.
IN OKLAHOMA CITY, OKLAHOMA

APPEARANCES

On behalf of the PLAINTIFFS:

Alan Himmelfarb
2757 Leonis Boulevard
Vernon, California 90058

On behalf of the DEFENDANT:

Gregory J. Hauck
123 South Broad Street
Philadelphia, Pennsylvania 19109

REPORTED BY: Andrea J. Gorman, CSR, RPR

90

92

1 Q. Where did you see these paragraphs?
 2 A. Somewhere on Microsoft.
 3 Q. You mean on a Microsoft website?
 4 A. I would say some Microsoft website. Maybe
 5 part of it when I was downloading, I really don't
 6 remember. But I wasn't that concerned with the
 7 portion I read or the part I read, I saw somewhere --
 8 because I assumed Microsoft was doing what it should
 9 do with the software that I purchased and keep it
 10 running right.
 11 Q. Okay. How do you reconcile the fact that
 12 you told me that you never saw the document that's
 13 been marked as Grennan Exhibit 12, but yet you also
 14 say that you've seen page 5 of Grennan 12?
 15 A. I saw what?
 16 MR. HIMMELFARB: Objection, misstates his
 17 testimony.
 18 Q. (By Mr. Hauck) I think you told me that
 19 you never saw the document that's been marked as
 20 Exhibit 12, correct?
 21 A. Exhibit 12? I don't recall seeing this
 22 document.
 23 Q. Okay. But --
 24 A. I certainly know I didn't read it.
 25 Q. Okay. But you are saying that you've seen

1 knowledge of paragraph 1, 2, 3, 4 under automatic
 2 dates on page 5, where I came into that information, I
 3 couldn't tell you.
 4 Q. Okay. Was it after you became a class
 5 representative in this lawsuit that you saw these
 6 paragraphs?
 7 A. I don't really know for certain, I believe
 8 that I -- I saw it sometime before.
 9 Q. Okay. Do you know if you saw these
 10 paragraphs before WGA was installed on any of your
 11 computers?
 12 A. I have no idea.
 13 Q. Have you ever heard of the Windows update
 14 website?
 15 A. Yes.
 16 Q. Okay. Tell me what it is.
 17 A. Pardon?
 18 Q. Can you tell me what it is?
 19 A. The Windows update website? I can go to
 20 Google and say give me Windows update and up comes
 21 Microsoft. It gives me a page that I can go look for
 22 updates for whatever software I have, whether it is
 23 Word or whether it is XP or whatever.
 24 Q. Have you ever installed software from the
 25 Windows update website?

91

93

1 page 5 of the exhibit before?
 2 MR. HIMMELFARB: Objection, misstates his
 3 testimony.
 4 THE WITNESS: I didn't hear your objection.
 5 MR. HIMMELFARB: The objection was that it
 6 misstates your prior testimony.
 7 Q. (By Mr. Hauck) Have you ever seen page 5
 8 of Exhibit 12 before?
 9 A. No, not this page in this format, that I
 10 recall.
 11 Q. Okay.
 12 A. I don't recall ever seeing Exhibit 12
 13 before you handed it to me, though I've seen some of
 14 the information on page 5, but I don't recall seeing
 15 the important information that's on page 5.
 16 Q. Now, when you say you've seen the
 17 information on page 5, did you see the information
 18 word for word?
 19 A. What?
 20 Q. You said that you've seen the information
 21 that's contained on page 5, correct?
 22 A. Yes, did I see all this that I say I saw
 23 word for word? Is that what you're asking?
 24 Q. Yes, that's what I'm asking.
 25 A. I don't know. But I know that I came into

1 A. Yes.
 2 Q. What software?
 3 A. Are you talking about any type software, a
 4 program, an update?
 5 Q. Yes.
 6 A. Absolutely anything?
 7 Q. Yes.
 8 A. Yeah, I certainly -- I certainly downloaded
 9 from the Windows update site on the Internet, but what
 10 I downloaded, no idea.
 11 Q. And have you downloaded programs from the
 12 Windows update website onto all three of your
 13 computers?
 14 A. Without looking at my computers, I really
 15 wouldn't know.
 16 Q. Okay. Do you know whether -- well, you
 17 told me that you know that you installed some software
 18 from the Windows update; is that correct?
 19 A. Yes. When I go to that site for updates,
 20 I -- it -- it tells me what updates I need and what's
 21 new since the last time I updated.
 22 Q. Onto what computer have you installed
 23 updates from the Windows update website?
 24 A. I know I have on my desktop.
 25 Q. Okay. Any of the other computers?

24 (Pages 90 to 93)

VERITEXT CORPORATE SERVICES (800) 567-8658

<p style="text-align: right;">94</p> <p>1 A. That, I don't know. Again, Microsoft has a</p> <p>2 copy of these computers.</p> <p>3 Q. Have you ever visited the Microsoft update</p> <p>4 website?</p> <p>5 A. The Microsoft what?</p> <p>6 Q. Have you ever visited the Microsoft update</p> <p>7 website?</p> <p>8 A. That's what we were just talking about.</p> <p>9 Q. We were talking about the Windows update</p> <p>10 website.</p> <p>11 A. The Microsoft Office update, are you</p> <p>12 saying? Which one? You have got too many updates.</p> <p>13 Q. I was just asking you about the Windows</p> <p>14 update website. Now, I'm asking you about the</p> <p>15 Microsoft update website. Have you ever visited the</p> <p>16 Microsoft update website?</p> <p>17 A. Now, I'm confused to the point I don't know</p> <p>18 what I have looked at. I've gone to Microsoft looking</p> <p>19 for updates for my computer, and as I recall, it's --</p> <p>20 it's, you know, the -- this update, this update, this</p> <p>21 update, update the Chinese, update this and that, and</p> <p>22 I pick out what looks like something that I would want</p> <p>23 on my computer and then I download it.</p> <p>24 Q. Okay. Do you know what the web address of</p> <p>25 the website is that you obtain these downloads from?</p>	<p style="text-align: right;">96</p> <p>1 to get updates?</p> <p>2 Q. Yes.</p> <p>3 A. What period of time?</p> <p>4 Q. Ever.</p> <p>5 A. Ever? I have no way of knowing. At the</p> <p>6 beginning of XP there was so many updates, plugging</p> <p>7 holes and viruses, there is no way I would know it.</p> <p>8 Q. Is it less than 50?</p> <p>9 A. Pardon?</p> <p>10 Q. Less than 50?</p> <p>11 A. I have no way of knowing. I could look</p> <p>12 on -- I could look on the computers, and, you know,</p> <p>13 ask that they show me all the programs, including all</p> <p>14 the updates, and it will tell me when Microsoft update</p> <p>15 went and got on my computer, but I really have no</p> <p>16 idea.</p> <p>17 Q. Let me talk about your desktop computer,</p> <p>18 okay?</p> <p>19 A. Uh-huh.</p> <p>20 Q. Now, you told me earlier that there was a</p> <p>21 period of time that automatic updates was turned on</p> <p>22 for your desktop computer, right?</p> <p>23 A. I'm quite sure that's right.</p> <p>24 Q. So some of the updates on your computer or</p> <p>25 all of the updates on your computer could have been</p>
<p style="text-align: right;">95</p> <p>1 A. No idea, it's Microsoft unless somebody has</p> <p>2 pirated Microsoft on the Internet, but I go to Google</p> <p>3 and just ask for Microsoft update, and it takes me to</p> <p>4 some page and whatever is on that page, I follow the</p> <p>5 yellow brick road and hope to find where I'm going to</p> <p>6 get, where I want to get.</p> <p>7 Q. Have you ever visited a website called the</p> <p>8 Download Center?</p> <p>9 A. Not that I know of.</p> <p>10 Q. Is it possible that the website that you've</p> <p>11 obtained updates from is the Download Center?</p> <p>12 A. Not possible because I don't even know what</p> <p>13 the Download Center is, it sounds like where you can</p> <p>14 download something, but I have no idea.</p> <p>15 Q. How often do you visit the website from</p> <p>16 which you obtained these Microsoft updates?</p> <p>17 A. Well, if automatic is on, I don't. If</p> <p>18 automatic is off, I may hear from somewhere that there</p> <p>19 is an update for this, that or whatever, and</p> <p>20 occasionally, if I don't have anything better to do,</p> <p>21 I'll go on and see if there is any updates, but I</p> <p>22 don't do anything routinely.</p> <p>23 Q. Well, how many times have you visited this</p> <p>24 website from which you've obtained these updates?</p> <p>25 A. How many times have I visited the Microsoft</p>	<p style="text-align: right;">97</p> <p>1 obtained through automatic updates, right?</p> <p>2 A. Yes, if it was on, it would happen without</p> <p>3 me even knowing.</p> <p>4 Q. So with respect to just your desktop</p> <p>5 computer, can you estimate for me the number of times</p> <p>6 that you visited this Microsoft website to download</p> <p>7 updates?</p> <p>8 A. On the -- it would be impossible because,</p> <p>9 as I testified earlier today, the -- the hard drive</p> <p>10 that has XP on my desktop computer started off with</p> <p>11 the first version of XP and it has moved along from</p> <p>12 that first computer to at least one or probably two</p> <p>13 other computers, and so what's -- what's there has</p> <p>14 been gathered over a long period of time.</p> <p>15 Q. I'm not asking you if it's possible to</p> <p>16 recreate the information, I'm asking based on your</p> <p>17 memory, how many times would you estimate that you</p> <p>18 visited this website from which you could obtain</p> <p>19 updates?</p> <p>20 A. I have no way of estimating.</p> <p>21 Q. You can't even estimate whether it's, let's</p> <p>22 say, less than 100?</p> <p>23 A. I really have no way of estimating.</p> <p>24 Q. Okay.</p> <p>25 A. I know that I have. I know that -- can</p>

25 (Pages 94 to 97)

Exhibit H

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BRIAN JOHNSON, et al.,

Plaintiffs,

vs.

No. CV 06-0900-RAJ

MICROSOFT CORPORATION,
a Washington corporation,

Defendant.

_____ /

DEPOSITION OF NATHAN VERRILLI

San Jose, California

Friday, August 28, 2008

Reported by:

RENEE K. ROMO

CSR No. 9947

Job No. 694668

Nathan Verrilli

August 28, 2008

<p style="text-align: right;">Page 122</p> <p>1 A When we were asked to do discovery we were told</p> <p>2 to look for -- we were instructed to look for certain WGA</p> <p>3 files in the Windows system directory. When I went</p> <p>4 looking for those files on that system, they were not</p> <p>5 present.</p> <p>6 Q Have you ever received any notification on your</p> <p>7 current home system that a WGA download or a WGA related</p> <p>8 download is available for installation?</p> <p>9 A I don't believe so, no.</p> <p>10 Q Other than looking for WGA in connection with</p> <p>11 this litigation on your current home system, have you</p> <p>12 done anything else to confirm whether WGA is currently</p> <p>13 installed on your home system?</p> <p>14 A No.</p> <p>15 Q Was WGA installed on your Compaq computer?</p> <p>16 A Yes.</p> <p>17 Q How do you know?</p> <p>18 A We found the files we were looking for that</p> <p>19 relate to a WGA.</p> <p>20 Q Who is we?</p> <p>21 A I'm sorry, me.</p> <p>22 Q The royal we?</p> <p>23 A Ah, well, obviously I discussed with counsel</p> <p>24 what files we were looking for and so in that sense.</p> <p>25 Q Right, and I don't want to know anything about</p>	<p style="text-align: right;">Page 124</p> <p>1 install on your Compaq computer?</p> <p>2 A I think I mentioned I'm terrible with dates. I</p> <p>3 became aware of it about somewhere between six and eight</p> <p>4 months before I ended up finally having to download it.</p> <p>5 So I'm not going to say what the year was, I'm sorry.</p> <p>6 (Exhibit Verrilli 10 marked.)</p> <p>7 BY MR. SKOK:</p> <p>8 Q That's all right. Let's see if we can refresh</p> <p>9 your recollection. I'm going to show you what we've</p> <p>10 marked Exhibit Verrilli 10 which are, "Plaintiffs</p> <p>11 Responses to Microsoft's First Set of Interrogatories to</p> <p>12 Newly Added Plaintiffs."</p> <p>13 A That should help.</p> <p>14 Q Take a look at Exhibit 10 and let me know when</p> <p>15 you have had a chance to look it over.</p> <p>16 A Yes.</p> <p>17 Q Take a look at the -- did you have any part in</p> <p>18 putting together these answers that are shown in Exhibit</p> <p>19 Verrilli 10?</p> <p>20 A Yes.</p> <p>21 Q Did you provide information in response to these</p> <p>22 interrogatories?</p> <p>23 A Yes.</p> <p>24 Q And did you sign a verification swearing that</p> <p>25 the answers were in fact true and correct?</p>
<p style="text-align: right;">Page 123</p> <p>1 those discussions.</p> <p>2 At what point did you first discover that WGA</p> <p>3 was installed on your Compaq computer?</p> <p>4 A Probably when I had to download and install it.</p> <p>5 Q When was that?</p> <p>6 A April of 2007, I believe.</p> <p>7 Q How do you believe that WGA got on to your</p> <p>8 Compaq computer?</p> <p>9 A I believe I finally gave up and downloaded it.</p> <p>10 Q What do you mean?</p> <p>11 A To continue receiving security updates at that</p> <p>12 time it was necessary to download and install WGA.</p> <p>13 Q When was the first time that you became aware of</p> <p>14 the WGA update being available to you for installation on</p> <p>15 your Compaq?</p> <p>16 A Probably about six months earlier or so.</p> <p>17 Q So sometime late 2006?</p> <p>18 A Yes, I believe so.</p> <p>19 Q How did you become aware in late 2006 that WGA</p> <p>20 was available for --</p> <p>21 A I think it was 2005; maybe I'm a year off. I'm</p> <p>22 not sure. I'm sorry.</p> <p>23 Q No, that's okay. Let's make sure we have the</p> <p>24 dates straight. Did you first become aware sometime in</p> <p>25 late 2005 that WGA was available for you to download and</p>	<p style="text-align: right;">Page 125</p> <p>1 A Yes.</p> <p>2 MR. SKOK: Could we go off the record?</p> <p>3 MR. HIMMELFARB: Yes.</p> <p>4 (Discussion held off the record.)</p> <p>5 MR. SKOK: Back on the record.</p> <p>6 BY MR. SKOK:</p> <p>7 Q Mr. Verrilli, take a look at Page 3 of Exhibit</p> <p>8 10. Do you see about halfway down the page there is an</p> <p>9 interrogatory that says, "For each copy of WGA Validation</p> <p>10 and WGA Notifications Software that was installed on any</p> <p>11 of your computers identify: (i) the update service or</p> <p>12 other source from which the software was downloaded,</p> <p>13 (e.g. Windows Update Service); (ii) the date on which the</p> <p>14 software was installed; and (iii) the manufacturer and</p> <p>15 model number of the computer on which the software was</p> <p>16 installed." Do you see that?</p> <p>17 A I do.</p> <p>18 Q And if you flip to Page 4 of Exhibit 10 you see</p> <p>19 about halfway down Line 12 there is a section that</p> <p>20 states, "Verrilli"?</p> <p>21 A I see it.</p> <p>22 Q Followed by, "(i) Automatic Updates; (ii)</p> <p>23 6/2/2006; and, (iii) Compaq Presario 8000." Do you see</p> <p>24 that?</p> <p>25 A I do.</p>

32 (Pages 122 to 125)

Nathan Verrilli

August 28, 2008

<p style="text-align: right;">Page 126</p> <p>1 Q Is it in fact the case that WGA was downloaded</p> <p>2 by you using Automatic Updates on to your Compaq</p> <p>3 Presario?</p> <p>4 A Yes.</p> <p>5 Q How do you know that you downloaded WGA through</p> <p>6 Automatic Updates?</p> <p>7 A Because that I recall doing.</p> <p>8 Q I'm sorry?</p> <p>9 A That, I recall doing. I did that, yes.</p> <p>10 Q Did you -- do you have any records that show</p> <p>11 that you downloaded WGA through Automatic Updates?</p> <p>12 A No.</p> <p>13 Q Did you make any kind of notes or document in</p> <p>14 some way the channel you used to download WGA?</p> <p>15 A I did not.</p> <p>16 Q Did you download WGA on to your Compaq Presario</p> <p>17 on June 2nd, 2006?</p> <p>18 A That is my -- that was my -- that was my best</p> <p>19 guess when I answered this interrogatory. And I believe</p> <p>20 it was based on the dates of the -- the modification</p> <p>21 dates of the WGA files we found.</p> <p>22 Q And do you know if WGA Validation is on your --</p> <p>23 was on your Compaq?</p> <p>24 A I don't know how to separate WGA Validation from</p> <p>25 WGA Notification; so I don't believe I can answer that</p>	<p style="text-align: right;">Page 128</p> <p>1 specifically recall -- I do not specifically recall the</p> <p>2 results of either of those two things or if I did them.</p> <p>3 Q Fair enough.</p> <p>4 (Exhibit Verrilli 11 marked.)</p> <p>5 BY MR. SKOK:</p> <p>6 Q Take a look at Exhibit Verrilli 11.</p> <p>7 A I don't believe I have that.</p> <p>8 Q I'm handing you Exhibit Verrilli 11.</p> <p>9 A Oh, that's why.</p> <p>10 Q Take a look at it and tell me if you recognize</p> <p>11 it.</p> <p>12 A No, I do not believe I do.</p> <p>13 Q Exhibit Verrilli 11 is a one page document</p> <p>14 Bate's number WGA-PL-267 that was produced to Microsoft</p> <p>15 by plaintiffs in this litigation with documents from you.</p> <p>16 Have you ever seen Exhibit 11 before to your knowledge?</p> <p>17 A I do not believe this is something I produced.</p> <p>18 Q Okay. Do you see about halfway down the page on</p> <p>19 Exhibit 11 there is a file named, "WgaLogon.dll." Do you</p> <p>20 see that?</p> <p>21 A Yes, I do.</p> <p>22 Q And below that is a file named, "WgaTray.exe."</p> <p>23 Do you see that?</p> <p>24 A Yes, I do.</p> <p>25 Q Are those files that you recognize as being on</p>
<p style="text-align: right;">Page 127</p> <p>1 question.</p> <p>2 Q You know that there were some WGA related files</p> <p>3 on your Compaq; you just don't know if they were WGA</p> <p>4 Validation or WGA Notification or both?</p> <p>5 A That's correct.</p> <p>6 Q Did you ever make any efforts to determine which</p> <p>7 files were on your Compaq, which software they related</p> <p>8 to, the validation or the notification?</p> <p>9 A No.</p> <p>10 Q Did you review any documents about WGA before</p> <p>11 you installed it on your Compaq?</p> <p>12 A Probably.</p> <p>13 Q You don't know for sure if you did or didn't?</p> <p>14 A I don't know for sure. I remember -- I remember</p> <p>15 finally installing it.</p> <p>16 Q Are there certain documents you believe you did</p> <p>17 review about WGA prior to installing it on your Compaq?</p> <p>18 A There are no specific documents that I could</p> <p>19 point to and say, I looked at these, no.</p> <p>20 Q In general is there a type or category of</p> <p>21 documents you believe you would have reviewed prior to</p> <p>22 installing WGA?</p> <p>23 A I would have followed the -- whatever KB article</p> <p>24 Microsoft provided for it, if they provided one. I might</p> <p>25 have gone to Google and looked up WGA. But I do not</p>	<p style="text-align: right;">Page 129</p> <p>1 your Compaq computer or do you believe they were on your</p> <p>2 Compaq computer at some point?</p> <p>3 A I believe -- I believe these were among the</p> <p>4 files we found on my computer, yes. I would need to</p> <p>5 check the directory listing to verify that though.</p> <p>6 Q If you look for those two files, "WgaLogon.dll,"</p> <p>7 and, "WgaTray.exe," over on the right-hand column there</p> <p>8 is a date modified for both as, "6/2/2006." Do you see</p> <p>9 that?</p> <p>10 A I do.</p> <p>11 Q Does this refresh your recollection about</p> <p>12 whether or not Exhibit 11 was produced or provided by you</p> <p>13 in this litigation?</p> <p>14 A Maybe it was. Usually I don't search like this.</p> <p>15 Q Do you recall providing any kind of --</p> <p>16 A This isn't --</p> <p>17 Q -- screen print?</p> <p>18 A This isn't even the color -- I don't think this</p> <p>19 is -- maybe it was. Oh, it's possible.</p> <p>20 Q Do you recall --</p> <p>21 A I don't recall. It's possible that I produced</p> <p>22 this. I don't recall so doing but -- but perhaps I did.</p> <p>23 Q Do you --</p> <p>24 A I know I spent a lot of time. I spent a fair</p> <p>25 amount of time looking for WGA. The dates of 6-2-2006</p>

33 (Pages 126 to 129)

Nathan Verrilli

August 28, 2008

Page 146

1 done so.

2 Q You don't recall ever printing anything related
3 to WGA in any way?

4 A That's correct.

5 (Exhibit Verrilli 16 marked.)

6 BY MR. SKOK:

7 Q Showing you what we have marked as Exhibit
8 Verrilli 16. Take a look at this for a moment and let me
9 know when you have had a chance to review it.

10 A Yes.

11 Q Exhibit Verrilli 16 is a screen shot of an
12 end-user license agreement that is presented to XP users
13 before they install WGA. Have you ever seen a screen
14 shot that looks like this on Exhibit 16?

15 A I believe I have; although, I do not recall
16 doing so specifically.

17 Q When do you recall seeing a screen shot that
18 looks like this on Exhibit Verrilli 16?

19 A When I installed WGA.

20 Q And that was on your Compaq computer?

21 A Yes.

22 Q Do you believe you saw this once or more than
23 once?

24 A Just once.

25 Q Did you read the entire end-user license

Page 147

1 agreement that appears in the window like that that
2 appears on Exhibit Verrilli 16 -- let me rephrase that.

3 Exhibit Verrilli 16 shows a copy of an end-user
4 license agreement in the window in the screen print; do
5 you see that?

6 A It shows a portion of an agreement, yes.

7 Q Correct. And that end-user license agreement
8 appeared to you while you were installing WGA, correct?

9 A Almost certainly, yes.

10 Q Did you review all or any portion of the
11 end-user license agreement for WGA while you were
12 installing WGA on your Compaq?

13 A No.

14 Q Have you ever reviewed any portion of the
15 end-user license agreement for WGA?

16 A I don't believe so, no.

17 Q Why didn't you review the end-user license
18 agreement for WGA prior to installing WGA on your Compaq?

19 A Because it is technical-legal -- it is a
20 technical-legal contract and I don't believe I have the
21 capability to understand it.

22 Q Do you see on Exhibit Verrilli 16, the window
23 shown in the middle includes three buttons, "I do not
24 agree, I agree," and, "print." Do you see that?

25 A Yes.

Page 148

1 Q Do you recall being presented with three buttons
2 saying, "I do not agree, I agree," or, "print," during
3 the course of installing WGA when an end-user license
4 agreement appeared?

5 A I do not.

6 Q Do you believe if you had been presented with
7 that choice you would have selected, "I agree," to the
8 end-user license agreement while installing WGA?

9 A Yes.

10 Q How come?

11 A Because if -- I cannot imagine the software
12 would install without so selecting.

13 Q And you understood that by clicking on the, "I
14 agree," button presented in connection with the WGA
15 end-user license agreement in the installation of WGA
16 that you were in fact agreeing to the end-user license
17 agreement for WGA?

18 A Yes.

19 Q Do you recall ever seeing anything at all in any
20 source about whether WGA collects any personal
21 information?

22 A Yes.

23 Q What have you seen?

24 A I have seen -- I have seen, for example in this
25 very document, Exhibit 16, that it claims not to collect

Page 149

1 such information.

2 Q Exhibit Verrilli 16 is the WGA end-user license
3 agreement, correct?

4 A I believe the last one says, let's see,
5 "information," you are right, I'm thinking of some -- I'm
6 obviously thinking of something else. They all blend
7 together. Never mind, probably not.

8 Q So just to make sure we are clear: You haven't
9 seen in the end-user license agreement for WGA any
10 reference to whether or not WGA collects personal
11 information?

12 A No.

13 Q And in fact you have never reviewed the WGA
14 end-user license agreement?

15 A Correct.

16 Q Do you recall ever reviewing anything about
17 whether WGA collects personal information?

18 A I believe I did.

19 Q What did you review?

20 A At this point I don't recall. It would have
21 been documentation on Microsoft's site. And the
22 information that -- what I -- what I gathered was that
23 WGA did not -- did not provide personally identifiable
24 information.

25 Q What does that term personally identifiable

38 (Pages 146 to 149)



License Agreement

Please read the following license agreement. To continue with setup, you must accept the agreement.

NOTICE: THIS UPDATE FROM MICROSOFT WILL HELP YOU KNOW IF YOU ARE RUNNING A PROPERLY LICENSED, GENUINE COPY OF WINDOWS XP. SOME UPDATES AND OFFERS FROM MICROSOFT REQUIRE A GENUINE COPY OF WINDOWS XP.

INSTALLING THIS UPDATE IS OPTIONAL. THE UPDATE WILL BECOME A PERMANENT PART OF YOUR WINDOWS XP SOFTWARE INFORMATION ABOUT YOUR SYSTEM (FOR EXAMPLE, YOUR WINDOWS PRODUCT KEY AND IP ADDRESS) WILL BE SENT TO MICROSOFT. MICROSOFT WILL NOT USE THE INFORMATION TO IDENTIFY OR CONTACT YOU.

Microsoft Software ☐ Do Not Agree ☒ Agree

Exhibit I

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BRIAN JOHNSON, et al.,

Plaintiffs,

vs.

No. CV 06-0900-RAJ

MICROSOFT CORPORATION, a

Washington corporation,

Defendant.

_____ /

Deposition of
BRIAN PHILIP WEATHERILL
Wednesday, August 6, 2008

Reported by:

SHARON CABELLO, RPR

CSR No. 3080

Job No. 691746

Page 158

1 Q. Was this on your laptop computer or desktop
2 computer?
3 A. Desktop.
4 Q. Did that ever happen on your laptop computer?
5 A. Yes, and I accepted the install.
6 Q. Why did you do that?
7 A. Because it was futile to not accept it.
8 Q. Why do you say that?
9 A. Because if you choose not to accept it and you
10 ask the application to not remind you, it reminds you
11 anyway.
12 Q. That was your experience on your desktop?
13 A. Correct.
14 Q. Have you ever heard of something called WGA
15 Validation?
16 A. Yes.
17 Q. What is WGA Validation?
18 A. It's the part that gets installed before it
19 asks you about WGA Notify.
20 Q. When did you first hear of WGA Validation?
21 A. That would have been through Slashdot.
22 Q. Is that the first series of Slashdot articles
23 we talked about or the second series of Slashdot
24 articles?
25 A. It's likely to have been the second, because

Page 159

1 the first I believe was about Notify. Because at the
2 time I believe that Validation was not entirely
3 visible.
4 Q. Did you hear about WGA Validation before you
5 received a download of WGA Notifications or after?
6 A. I would have heard about it after.
7 Q. After you received a download on both your
8 desktop and your laptop of WGA Notifications?
9 A. After the desktop before the laptop.
10 Q. Okay. So at the time that you installed WGA
11 Notifications on your laptop you had already heard
12 about WGA Validation through that second series of
13 Slashdot articles?
14 A. Yes, and there was essentially no way to stop
15 it from happening.
16 Q. What is your understanding of what the WGA
17 Notifications is?
18 A. If I remember correctly, it simply popped up a
19 window for what those older of us here remember as
20 Nagware which will continue to pop that window up and
21 remind you that your copy is not legal, and ask you to
22 please go pay Microsoft to get rid of the Nagware site.
23 Q. Is there a difference in your understanding
24 between WGA Validation and WGA Notifications, in your
25 opinion?

Page 160

1 A. They perform different functions.
2 Q. How so?
3 A. One advises you the user of a system that you
4 are not in compliance. The other, as far as I
5 understand it, advises Microsoft that you are not in
6 compliance.
7 Q. Notification advises you, Validation advises
8 Microsoft?
9 A. That's the way I understand it, yes.
10 Q. Do you know if WGA Validation is on your
11 desktop computer currently?
12 A. I believe it is.
13 Q. And how did WGA Validation get on your desktop
14 computer?
15 A. I believe it was installed by auto updates,
16 and if I remember correctly it is installed immediately
17 prior to the attempt to install WGA Validation --
18 sorry, WGA Notifications.
19 Q. Why do you believe that WGA Validation is on
20 your desktop computer?
21 A. I have reviewed an install log that indicates
22 that it's installed.
23 Q. Where was that install log?
24 A. I believe it was in the Windows/System 32
25 directory.

Page 161

1 Q. Do you believe that WGA -- do you know if WGA
2 Validation is installed on your laptop currently?
3 A. I believe it is.
4 Q. How did WGA Validation get on your laptop?
5 A. I believe it was installed through Automatic
6 Updates.
7 Q. When was that installed?
8 A. Without referring to records, I can't tell
9 you.
10 Q. Why do you believe that WGA Validation is
11 installed on your laptop?
12 A. Because there is a log file that indicates it
13 was installed.
14 Q. Where is that log file?
15 A. In the Windows/System 32 directory, I believe.
16 Q. Do you know if Notifications is currently
17 installed on your desktop?
18 A. I believe it is.
19 Q. And how did WGA Notifications get on your
20 desktop?
21 A. Through Windows or Microsoft Update based on
22 previous experience I gave up the futile attempt to
23 have it not install.
24 Q. You don't know if you obtained WGA
25 Notifications for your desktop through Windows updates

41 (Pages 158 to 161)

August 6, 2008

Brian Philip Weatherill

<p style="text-align: right;">Page 162</p> <p>1 or Microsoft Update?</p> <p>2 A. It's highly unlikely.</p> <p>3 Q. I apologize, I may have misunderstood you. I</p> <p>4 thought you just said that you believed WGA</p> <p>5 Notifications --</p> <p>6 A. Through Automatic Updates.</p> <p>7 Q. Okay, that's clarification. So it's your</p> <p>8 understanding WGA Notifications came to be on your</p> <p>9 desktop computer through Automatic Updates?</p> <p>10 A. I believe so.</p> <p>11 Q. Why do you believe that?</p> <p>12 A. That's how the laptop and desktop are</p> <p>13 generally kept up to date. After the first batch of</p> <p>14 install -- after the first installation of SP2</p> <p>15 everything else will then download and then it will</p> <p>16 patch.</p> <p>17 Q. I think you told me earlier that in every</p> <p>18 instance where Automatic Updates had shown that WGA</p> <p>19 Notifications had been downloaded they asked you</p> <p>20 whether to install, and you elected to not install,</p> <p>21 correct?</p> <p>22 A. In the first instance on the desktop I elected</p> <p>23 not to install Notify. However, when told not to ask,</p> <p>24 it continues to ask. So to avoid the issue of it</p> <p>25 occurring in the middle of something I need to be</p>	<p style="text-align: right;">Page 164</p> <p>1 Q. MR. SKOK: I'm going to show you what has been</p> <p>2 marked as Exhibit Weatherill 16. Take a moment and</p> <p>3 take a look. This is Plaintiff's Responses to</p> <p>4 Microsoft's First Set of Interrogatories to Newly Added</p> <p>5 Plaintiffs.</p> <p>6 A. Okay, I believe I'm ready.</p> <p>7 Q. Take a look at page 16, Exhibit Weatherill 16.</p> <p>8 A. Yes.</p> <p>9 Q. You see it says "Verification. I, Brian</p> <p>10 Weatherill, being first duly sworn, declare that I have</p> <p>11 read the foregoing Answers to Defendant Microsoft</p> <p>12 Corporation's First Set of Interrogatories to Newly</p> <p>13 Added Plaintiffs, know the contents thereof with</p> <p>14 respect to those responses that are attributable to me,</p> <p>15 and believe the same to be true and correct."</p> <p>16 You see that?</p> <p>17 A. Yes.</p> <p>18 Q. And there is a signature under there. You see</p> <p>19 that?</p> <p>20 A. Yes.</p> <p>21 Q. Is that your signature?</p> <p>22 A. It is, yes.</p> <p>23 Q. And you understood that by signing this you</p> <p>24 were verifying the accuracy, truthfulness and</p> <p>25 completeness of the answers regarding you in this</p>
<p style="text-align: right;">Page 163</p> <p>1 doing, I let it install.</p> <p>2 Q. Okay. So there did come a point where you did</p> <p>3 agree to install WGA Notifications on your desktop?</p> <p>4 A. Correct.</p> <p>5 Q. When was that?</p> <p>6 A. I couldn't tell you. I was not happy about</p> <p>7 it, though.</p> <p>8 Q. Do you know if WGA Notifications is currently</p> <p>9 on your laptop?</p> <p>10 A. I believe it is.</p> <p>11 Q. How did WGA Notifications come to be on your</p> <p>12 laptop?</p> <p>13 A. Through the same process as the desktop.</p> <p>14 Q. Through Automatic Updates?</p> <p>15 A. Yes, I believe so.</p> <p>16 Q. And when you received WGA Notifications on</p> <p>17 your laptop through Automatic Updates did you agree to</p> <p>18 install it upon receipt?</p> <p>19 A. I can't remember if I agreed or if I checked a</p> <p>20 box to make it install.</p> <p>21 Q. Fair enough. Either way you installed it upon</p> <p>22 receipt?</p> <p>23 A. Correct.</p> <p>24 (Weatherill Exhibit 16 was marked</p> <p>25 for identification.)</p>	<p style="text-align: right;">Page 165</p> <p>1 document, Weatherill 16?</p> <p>2 A. Yes.</p> <p>3 Q. All right. Take a look -- and in fact those</p> <p>4 answers in here which relate to you in Exhibit</p> <p>5 Weatherill 16, those are accurate and truthful?</p> <p>6 A. To my knowledge, yes.</p> <p>7 Q. Take a look at Interrogatory No. 1, it's on</p> <p>8 page 3 of Weatherill 16.</p> <p>9 Interrogatory 1 says, "For each copy of WGA</p> <p>10 Validation and WGA Notifications software that was</p> <p>11 installed on any of your computers identify: (i) the</p> <p>12 update service or other source from which the software</p> <p>13 was downloaded (e.g., Windows Update Service); (ii) the</p> <p>14 date on which the soft was installed; and (iii) the</p> <p>15 manufacture and model number of the computer on which</p> <p>16 the software was installed."</p> <p>17 You see that?</p> <p>18 A. Yes.</p> <p>19 Q. And if you turn to page 4 of Exhibit</p> <p>20 Weatherill 16 you see there is a section that says</p> <p>21 "Weatherill" about midway down?</p> <p>22 A. Yes.</p> <p>23 Q. And under number (i) it says "Automatic</p> <p>24 Updates." You see that?</p> <p>25 A. Yes.</p>

42 (Pages 162 to 165)

Page 166

1 Q. And number (ii) it says "2006/04/26 (according
2 to WGA.log)." You see that?
3 A. Yes.
4 Q. Okay. And number (iii) says "Self-built," see
5 that?
6 A. Yes.
7 Q. Do these answers on page 4 of Weatherill 16
8 relate to you and your obtaining WGA Validation and
9 Notifications?
10 A. They relate to the desktop, yes.
11 Q. So the answers on page 4 of Weatherill 16 are
12 desktop, only?
13 A. Correct.
14 Q. Let's start with number one then for your
15 laptop. It's the same, correct, the update service or
16 source from which you believe you obtain Validation and
17 Notifications was also Automatic Updates?
18 A. I believe so, yes.
19 Q. What about the date on which you believe you
20 obtained WGA Notifications or WGA Validation for your
21 laptop?
22 A. I believe we have the log files present and
23 the date would match those.
24 Q. All right. Let's take a look at those and
25 make sure we are looking at the right ones.

Page 168

1 25th, 2006?
2 A. To my knowledge, yes.
3 Q. And the basis of that understanding is what is
4 written here on Exhibit Weatherill 17?
5 A. Yes.
6 Q. Any other basis?
7 A. No, although it does match the timeframe we
8 have been discussing.
9 Q. Is there anything on Exhibit Weatherill 17
10 that tells you whether WGA Validation was ever
11 installed on your laptop?
12 A. I believe the DLL is present again as a
13 directory listing, which would indicate the presence or
14 absence of that information.
15 Q. Is that present on Exhibit Weatherill 17 or on
16 some other document?
17 A. It's on another document. It's the listing of
18 the Windows/System 32 Directory that was provided by
19 counsel.
20 Q. Did you obtain Exhibit Weatherill 17 from your
21 computer?
22 A. Yes.
23 Q. How did you do that?
24 A. Did a search for the WgaNotify.log file, and
25 then opened and printed the result of the search.

Page 167

1 (Weatherill Exhibit 17 was marked
2 for identification.)
3 Q. MR. SKOK: Showing you Exhibit Weatherill 17,
4 which appears to be a print of a WgaNotify.log. Take a
5 moment to look at that and let me know when you've had
6 a chance to review it.
7 A. Yes, I am done.
8 Q. Is Exhibit 17 a printout of the WgaNotify.log
9 from your laptop computer?
10 A. Yes.
11 Q. And do you see the handwritten word "Laptop"
12 on the top of page 1 of Weatherill 17?
13 A. Yes.
14 Q. Is that your handwriting?
15 A. Yes.
16 Q. Is there something on Exhibit Weatherill 17
17 that indicates to you when WGA Notifications was
18 installed on your laptop?
19 A. Yes, the first line is dated 2006/07/25
20 indicating the 25th of July '06.
21 Q. You are referring to the first line on the
22 first page of Exhibit Weatherill 17?
23 A. Yes.
24 Q. Is it your understanding that WGA
25 Notifications was installed on your laptop on July

Page 169

1 Q. How did you know what to look for?
2 A. I had done this previously for my desktop.
3 Q. In this litigation?
4 A. As part of preparation for the litigation,
5 yes.
6 MR. SKOK: Can we go off the record for a
7 moment.
8 (Discussion off the record.)
9 (Weatherill Exhibit 18 was marked
10 for identification.)
11 Q. MR. SKOK: Mr. Weatherill, I'm handing you
12 what has been marked as Exhibit Weatherill 18.
13 A. Thank you.
14 Q. This appears to be a printout of your
15 directory of C:\Windows. Let me know when you've had a
16 chance to review it briefly.
17 A. I'm done.
18 Q. What is Exhibit Weatherill 18, to your
19 knowledge?
20 A. A printout of the Windows directory on my
21 laptop.
22 Q. Where did Exhibit Weatherill 18 come from?
23 A. From myself, and through counsel it was
24 printed from my laptop.
25 Q. How did you know to print this particular

43 (Pages 166 to 169)

Page 194

1 (Weatherill Exhibit 26 was marked
2 for identification.)
3 Q. MR. SKOK: I will show you what I am going to
4 mark as Exhibit Weatherill 26.
5 A. Thank you.
6 Q. Take a look at Exhibit 26 for a moment.
7 A. Yes.
8 Q. This is a screen shot of an End-User License
9 Agreement presented to users before they install WGA.
10 Have you ever seen Exhibit 26 before?
11 A. I don't recognize the desktop, and I assume
12 this is not my system.
13 Q. It's not.
14 A. I believe I have seen this window before.
15 Q. Where did you see this window shown on Exhibit
16 Weatherill 26 before?
17 A. When I reviewed documents with counsel.
18 Q. Prior to reviewing documents with counsel --
19 was that in preparation for this deposition?
20 A. Yes.
21 Q. Prior to reviewing documents with counsel in
22 preparation for this deposition had you ever seen a
23 screen shot or a window like that shown on Weatherill
24 26 before, to your knowledge?
25 A. I can't recall.

Page 195

1 Q. You don't know if you did or didn't?
2 A. I am unsure which -- I believe there are two
3 ways that -- I can't remember whether this box was
4 presented when I installed the knowledge based article
5 relating to WGA Notify.
6 I don't remember this specific box, however,
7 the fact that the product is installed and that this is
8 the only way to install a product when it's downloaded
9 through auto updates would indicate that I have done
10 so.
11 Q. So if I understood, the fact that you have got
12 WGA Notifications on your laptop and your desktop leads
13 you to believe that, in fact, you have seen this window
14 or screen shot shown on Exhibit Weatherill 26 prior to
15 installation of WGA Notifications?
16 A. That's my understanding, yes.
17 Q. Did you read the License Agreement shown in
18 the screen shot or the window on Exhibit Weatherill 26
19 prior to installing WGA Notifications on your laptop or
20 desktop?
21 A. I reviewed the License Agreement in a cursory
22 manner, yes.
23 Q. The entire agreement, or only portions?
24 A. Portions.
25 Q. Which portions?

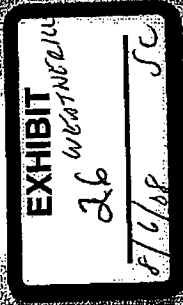
Page 196

1 A. Essentially what is displayed on the screen at
2 the current time -- on the image that you represent in
3 Exhibit 26.
4 Q. Is the portions of the License Agreement for
5 WGA that you would have reviewed prior to installing
6 notification on your laptop and desktop are those shown
7 on Exhibit Weatherill 26?
8 A. Correct, yes.
9 Q. You see there is a button toward the bottom of
10 the window in the middle of the page on Weatherill 26
11 for "I Agree"?
12 A. I see it, yes.
13 Q. Did you select that button, "I Agree," on the
14 License Agreement shown in Exhibit Weatherill 26 prior
15 to installing WGA Notifications on your desktop and
16 laptop?
17 A. I believe the first time that this would have
18 occurred I would have selected "I Do Not Agree."
19 Q. How come?
20 A. I didn't want it installed.
21 Q. What happened when you selected "I Do Not
22 Agree"?
23 A. It went away for a period of time and then
24 returned and asked me again.
25 Q. And after that did you install WGA

Page 197

1 Notifications and select "I Agree" in the window or
2 screen shot shown on Weatherill 26?
3 A. Yes, I would have.
4 Q. And did you understand by selecting "I Agree"
5 that you were agreeing to the terms of the License
6 Agreement shown in the screen shot on Exhibit
7 Weatherill 26 for WGA?
8 A. Yes.
9 Q. Have you ever -- did you make any kind of
10 record of the License Agreement shown on Exhibit
11 Weatherill 26 at the time you agreed to it?
12 A. Other than the log created by the computer
13 system at the time, no.
14 Q. Have you ever printed out that License
15 Agreement for WGA shown on Weatherill 26 that you
16 agreed to?
17 A. No. Although I would like to say that I do
18 not recall, but it is likely that I would have reviewed
19 the Privacy Statement that's linked to the bottom
20 left-hand corner of Exhibit 26. And specifically why I
21 would have reviewed that is because I had rejected the
22 installation the first time.
23 And, again, that's -- I cannot confirm that I
24 did that, but it is most likely that I would have done
25 that.

50 (Pages 194 to 197)



License Agreement

Please read the following license agreement. To continue with setup, you must accept the agreement.

NOTICE: THIS UPDATE FROM MICROSOFT WILL HELP YOU KNOW IF YOU ARE RUNNING A PROPERLY LICENSED, GENUINE COPY OF WINDOWS XP. SOME UPDATES AND OFFERS FROM MICROSOFT REQUIRE A GENUINE COPY OF WINDOWS XP.

INSTALLING THIS UPDATE IS OPTIONAL. THE UPDATE WILL BECOME A PERMANENT PART OF YOUR WINDOWS XP SOFTWARE.

INFORMATION ABOUT YOUR SYSTEM (FOR EXAMPLE, YOUR WINDOWS PRODUCT KEY AND IP ADDRESS) WILL BE SENT TO MICROSOFT. MICROSOFT WILL NOT USE THE INFORMATION TO IDENTIFY OR CONTACT YOU.

Privacy Statement

☐ Do Not Agree

☒ I Agree

Print

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Next >

Cancel

Exhibit J

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BRIAN JOHNSON, et al.,

Plaintiffs,

vs.

MICROSOFT CORPORATION, a
Washington corporation,

Defendant.

No. CV 06-0900 RAJ
[Consolidated Cases]

**MICROSOFT CORPORATION'S
OBJECTIONS AND
SUPPLEMENTAL RESPONSE TO
NEWLY ADDED PLAINTIFF
CHARLES ELLIS'S FIRST SET OF
INTERROGATORIES TO
DEFENDANT MICROSOFT
CORPORATION**

TO: Plaintiffs;

AND TO: All Counsel of Record for Plaintiffs.

INTERROGATORY NO. 4

In YOUR Microsoft's Responses to Johnson's Interrogatories, No. 18, Microsoft states, in part:

In addition to the WGA EULA and Windows XP EULAs, the other writings that evidence permission and/or authorization for downloading WGA onto users' computers during the Class Period are the screens that were presented to users in connection with the receipt of updates and the download and/or installation of WGA.

Separately, for each user-defined setting for each channel YOU have identified in YOUR response to Ellis Interrogatory No. 3, IDENTIFY ALL SCREENS which WERE OR COULD HAVE BEEN PRESENTED to users in connection with the download and/or installation of WGA.

MICROSOFT CORPORATION'S SUPPLEMENTAL
RESPONSES TO PLAINTIFF CHARLES ELLIS'S
FIRST SET OF INTERROGATORIES - 1
Case No. CV 06-0900 RAJ

RIDDELL WILLIAMS P.S.
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1 SUPPLEMENTAL ANSWER:

2 Microsoft incorporates each of its General Objections and Objections to Definitions and
3 Instructions in its original Objections and Responses to Newly Added Plaintiff Charles Ellis's
4 First Set of Interrogatories.
5

6 Microsoft further objects on the ground that this Interrogatory seeks information beyond
7 the scope of the claims at issue in this case and outside the proposed class definition, which
8 encompasses only Automatic Updates, Microsoft Update and Windows Update.
9

10 The Supplemental Answer to this Interrogatories is expressly conditioned upon: (1) the
11 term "Automatic Setting" meaning the setting of Automatic Updates where updates are
12 downloaded and installed automatically on a schedule specified by the user; (2) the term "Semi-
13 Automatic Setting" meaning the setting of Automatic Updates where the updates are downloaded
14 automatically and installed when the user initiates the installation; and (3) the term "Manual
15 Setting" meaning the setting of Automatic Updates where there are alerts of the availability of
16 updates, and the updates are downloaded and installed when the user initiates the download and
17 installation.
18

19 Subject to and without waiver of its foregoing Objections, Microsoft provides the
20 following supplemental response:

21 In its August 27, 2008 letter to Plaintiffs' counsel, Microsoft agreed to identify: (1) the
22 screenshots for the Automatic Updates, Windows Update and Microsoft Update channels; (2) the
23 Web browsers needed for each update service; (3) the sequence in which the screenshots were
24 presented and the screenshots that were optional; and (4) the dates on which each set of
25 screenshots was available. This information is below.
26

1 **1. The Screenshots for Each Channel.**

2 Microsoft produced copies of the screenshots that were presented to users in the United
3
4 States who installed: (a) versions 1.5.0526, 1.5.0532, 1.5.0532.2, 1.5.0540 and 1.5.0554 of
5 WGA through Automatic Updates by using the express install, see MS-WGAJ 1539-45; (b)
6 versions 1.5.0526, 1.5.0532, 1.5.0532.2, 1.5.0540 and 1.5.0554 of WGA through Automatic
7 Updates by using the custom install, see MS-WGAJ 1546-53; (c) versions 1.5.0560 and 1.7.0017
8 of WGA through Automatic Updates by using the custom install, see MS-WGAJ 15345-55; (d)
9 versions 1.5.0560 and 1.7.0017 of WGA through Automatic Updates by using the express install,
10 see MS-WGAJ 15356-64; (e) versions 1.7.0018.1, 1.7.0018.5 and 1.7.0018.7 of WGA through
11 Automatic Updates by using the custom install, see MS-WGAJ 15365-76; (f) versions
12 1.7.0018.1, 1.7.0018.5 and 1.7.0018.7 of WGA through Automatic Updates by using the express
13 install, see MS-WGAJ 15377-86; and (g) versions of WGA and WGA Validation through
14 Windows Update and Microsoft Update, see MS-WGAJ 15388-436.

15 **2. The Web Browsers Needed for Each Update Service.**

16 The installation of WGA or WGA Validation through Windows Update or Microsoft
17
18 Update requires the Internet Explorer Web browser. Although the installation of WGA through
19 Automatic Updates requires an Internet connection, it does not require a Web browser.
20

21 **3. The Sequence in Which the Screenshots Were Presented and**
22 **the Screenshots That Were Optional.**

23 The screenshots that were presented to users varied depending upon the Automatic
24 Update setting the user used, the type of install (i.e., custom vs. express) the users selected, and
25 other user decisions. The variations are set forth below.
26

1 (a) Versions 1.5.0526, 1.5.0532 and 1.5.0532.2 of WGA installed through the
 2 Automatic Setting of Automatic Updates

3 For versions 1.5.0526, 1.5.0532 and 1.5.0532.2 of WGA installed through the Automatic
 4 Setting of Automatic Updates, users with genuine copies of Windows XP were presented with
 5 the screenshots in the sequential order of MS-WGAJ 1540, MS-WGAJ 1542, MS-WGAJ 1543,
 6 MS-WGAJ 1544 and MS-WGAJ 1545.

7
 8 When these users were presented with the "Read the following EULA" screenshot at MS-
 9 WGAJ 1542, the WGA EULA from MS-WGAJ 498-500 was displayed.

10 (b) Versions 1.5.0526, 1.5.0532 and 1.5.0532.2 of WGA installed through the
 11 Semi-Automatic Setting of Automatic Updates

12 For versions 1.5.0526, 1.5.0532 and 1.5.0532.2 of WGA installed through the Semi-
 13 Automatic Setting of Automatic Updates, users with genuine copies of Windows XP who used
 14 the express install were presented with the screenshots in the sequential order of MS-WGAJ
 15 1540, MS-WGAJ 1541, MS-WGAJ 1542, MS-WGAJ 1543, MS-WGAJ 1544 and MS-WGAJ
 16 1545.

17 Users with genuine copies of Windows XP who used the custom install were presented
 18 with the screenshots in the sequential order of MS-WGAJ 1547, MS-WGAJ 1548, MS-WGAJ
 19 1549, MS-WGAJ 1550, MS-WGAJ 1551, MS-WGAJ 1552 and MS-WGAJ 1553. Additionally,
 20 custom install users who unchecked the box on the "Choose updates to Install" screenshot (at
 21 MS-WGAJ 1549) were presented with the "Hide Updates" screenshot (at MS-WGAJ 15387).

22
 23 When express and custom install users were presented with the "Read the following
 24 EULA" screenshot at MS-WGAJ 1542 or MS-WGAJ 1550, the WGA EULA from MS-WGAJ
 25 498-500 was displayed.
 26

1 (c) Versions 1.5.0526, 1.5.0532 and 1.5.0532.2 of WGA installed through the
 2 Manual Setting of Automatic Updates

3 For versions 1.5.0526, 1.5.0532 and 1.5.0532.2 of WGA installed through the Manual
 4 Setting of Automatic Updates, users with genuine copies of Windows XP who used the express
 5 install were presented with the screenshots in the sequential order of MS-WGAJ 15439, MS-
 6 WGAJ 15440, MS-WGAJ 1540, MS-WGAJ 1541, MS-WGAJ 1542, MS-WGAJ 1543, MS-
 7 WGAJ 1544 and MS-WGAJ 1545.

8
 9 Users with genuine copies of Windows XP who used the custom install were presented
 10 with the screenshots in the sequential order of MS-WGAJ 15439, MS-WGAJ 15440, MS-WGAJ
 11 1547, MS-WGAJ 1548, MS-WGAJ 1549, MS-WGAJ 1550, MS-WGAJ 1551, MS-WGAJ 1552
 12 and MS-WGAJ 1553. Additionally, custom install users who unchecked the box on the "Choose
 13 updates to Install" screenshot (at MS-WGAJ 1549) were presented with the "Hide Updates"
 14 screenshot (at MS-WGAJ 15387).

15
 16 Express and custom install users who did not check the box for "Windows Genuine
 17 Advantage Notification (KB905474)" on the "Choose updates to download" screenshot (at MS-
 18 WGAJ 15440) were presented with the "Hide Updates" screenshot (at MS-WGAJ 15441). Also,
 19 when express and custom install users were presented with the "Read the following EULA"
 20 screenshot at MS-WGAJ 1542 or MS-WGAJ 1550, the WGA EULA from MS-WGAJ 498-500
 21 was displayed.

22
 23 (d) Versions 1.5.0540 and 1.5.0554 of WGA installed through the Automatic
 24 Setting of Automatic Updates

25 For versions 1.5.0540 and 1.5.0554 of WGA installed through the Automatic Setting of
 26 Automatic Updates, users with genuine copies of Windows XP were presented with the

1 screenshots in the sequential order of MS-WGAJ 1540, MS-WGAJ 1542, MS-WGAJ 1543, MS-
 2 WGAJ 1544 and MS-WGAJ 1545.

3
 4 When these users were presented with the "Read the following EULA" screenshot at MS-
 5 WGAJ 1542, the WGA EULA from MS-WGAJ 15437-38 was displayed.

6 (e) Versions 1.5.0540 and 1.5.0554 of WGA installed through the Semi-
 7 Automatic Setting of Automatic Updates

8 For versions 1.5.0540 and 1.5.0554 of WGA installed through the Semi-Automatic
 9 Setting of Automatic Updates, users with genuine copies of Windows XP who used the express
 10 install were presented with the screenshots in the sequential order of MS-WGAJ 1540, MS-
 11 WGAJ 1541, MS-WGAJ 1542, MS-WGAJ 1543, MS-WGAJ 1544 and MS-WGAJ 1545.

12 Users with genuine copies of Windows XP who used the custom install were presented
 13 with the screenshots in the sequential order of MS-WGAJ 1547, MS-WGAJ 1548, MS-WGAJ
 14 1549, MS-WGAJ 1550, MS-WGAJ 1551, MS-WGAJ 1552 and MS-WGAJ 1553. Additionally,
 15 custom install users who unchecked the box on the "Choose updates to Install" screenshot (at
 16 MS-WGAJ 1549) were presented with the "Hide Updates" screenshot (at MS-WGAJ 15387).

17
 18 When express and custom install users were presented with the "Read the following
 19 EULA" screenshot at MS-WGAJ 1542 or MS-WGAJ 1550, the WGA EULA from MS-WGAJ
 20 15437-38 was displayed.

21 (f) Versions 1.5.0540 and 1.5.0554 of WGA installed through the Manual
 22 Setting of Automatic Updates

23 For versions 1.5.0540 and 1.5.0554 of WGA installed through the Manual Setting of
 24 Automatic Updates, users with genuine copies of Windows XP who used the express install were
 25 presented with the screenshots in the sequential order of MS-WGAJ 15439, MS-WGAJ 15440,
 26

1 MS-WGAJ 1540, MS-WGAJ 1541, MS-WGAJ 1542, MS-WGAJ 1543, MS-WGAJ 1544 and
2 MS-WGAJ 1545.

3
4 Users with genuine copies of Windows XP who used the custom install were presented
5 with the screenshots in the sequential order of MS-WGAJ 15439, MS-WGAJ 15440, MS-WGAJ
6 1547, MS-WGAJ 1548, MS-WGAJ 1549, MS-WGAJ 1550, MS-WGAJ 1551, MS-WGAJ 1552
7 and MS-WGAJ 1553. Additionally, custom install users who unchecked the box on the "Choose
8 updates to Install" screenshot (at MS-WGAJ 1549) were presented with the "Hide Updates"
9 screenshot (at MS-WGAJ 15387).

10
11 Express and custom install users who did not check the box for "Windows Genuine
12 Advantage Notification (KB905474)" on the "Choose updates to download" screenshot (at MS-
13 WGAJ 15440) were presented with the "Hide Updates" screenshot (at MS-WGAJ 15441). Also,
14 when express and custom install users were presented with the "Read the following EULA"
15 screenshot at MS-WGAJ 1542 or MS-WGAJ 1550, the WGA EULA from MS-WGAJ 15437-38
16 was displayed.

17
18 (g) Versions 1.5.0560 and 1.7.0017 of WGA installed through the Automatic
Setting of Automatic Updates

19 For versions 1.5.0560 and 1.7.0017 of WGA installed through the Automatic Setting of
20 Automatic Updates, users with genuine copies of Windows XP were presented with the
21 screenshots in the sequential order of MS-WGAJ 15357, MS-WGAJ 15359, MS-WGAJ 15360,
22 MS-WGAJ 15361 and MS-WGAJ 15362.

23
24 When these users were presented with the "License Agreement" screenshot at MS-WGAJ
25 15360, the WGA EULA from MS-WGAJ 15437-38 was displayed.
26

1 (h) Versions 1.5.0560 and 1.7.0017 of WGA installed through the Semi-
 2 Automatic Setting of Automatic Updates

3 For versions 1.5.0560 and 1.7.0017 of WGA installed through the Semi-Automatic
 4 Setting of Automatic Updates, users with genuine copies of Windows XP who used the express
 5 install were presented with the screenshots in the sequential order of MS-WGAJ 15357, MS-
 6 WGAJ 15358, MS-WGAJ 15359, MS-WGAJ 15360, MS-WGAJ 15361 and MS-WGAJ 15362.

7 Users with genuine copies of Windows XP who used the custom install were presented
 8 with the screenshots in the sequential order of MS-WGAJ 15346, MS-WGAJ 15347, MS-WGAJ
 9 15348, MS-WGAJ 15350, MS-WGAJ 15351, MS-WGAJ 15352 and MS-WGAJ 15353.
 10 Additionally, custom install users who unchecked the box on the "Choose updates to Install"
 11 screenshot (at MS-WGAJ 15348) were presented with the "Hide Updates" screenshot (at MS-
 12 WGAJ 15349).
 13

14 When express and custom install users were presented with the "License Agreement"
 15 screenshot at MS-WGAJ 15360 or MS-WGAJ 15351, the WGA EULA from MS-WGAJ 15437-
 16 38 was displayed.
 17

18 (i) Versions 1.5.0560 and 1.7.0017 of WGA installed through the Manual
 19 Setting of Automatic Updates

20 For versions 1.5.0560 and 1.7.0017 of WGA installed through the Manual Setting of
 21 Automatic Updates, users with genuine copies of Windows XP who used the express install were
 22 presented with the screenshots in the sequential order of MS-WGAJ 15439, MS-WGAJ 15440,
 23 MS-WGAJ 15357, MS-WGAJ 15358, MS-WGAJ 15359, MS-WGAJ 15360, MS-WGAJ 15361
 24 and MS-WGAJ 15362.

25 Users with genuine copies of Windows XP who used the custom install were presented
 26 with the screenshots in the sequential order of MS-WGAJ 15439, MS-WGAJ 15440, MS-WGAJ

1 15346, MS-WGAJ 15347, MS-WGAJ 15348, MS-WGAJ 15350, MS-WGAJ 15351, MS-WGAJ
 2 15352 and MS-WGAJ 15353. Additionally, custom install users who unchecked the box on the
 3 "Choose updates to Install" screenshot (at MS-WGAJ 15348) were presented with the "Hide
 4 Updates" screenshot (at MS-WGAJ 15349).

5
 6 Express and custom install users who did not check the box for "Windows Genuine
 7 Advantage Notification (KB905474)" on the "Choose updates to download" screenshot (at MS-
 8 WGAJ 15440) were presented with the "Hide Updates" screenshot (at MS-WGAJ 15441). Also,
 9 when express and custom install users were presented with the "License Agreement" screenshot
 10 at MS-WGAJ 15360 or MS-WGAJ 15351, the WGA EULA from MS-WGAJ 15437-38 was
 11 displayed.
 12

13 (j) Versions 1.7.0018.1, 1.7.0018.5 and 1.7.0018.7 of WGA installed through
 14 the Automatic Setting of Automatic Updates

15 For versions 1.7.0018.1, 1.7.0018.5 and 1.7.0018.7 of WGA installed through the
 16 Automatic Setting of Automatic Updates, users with genuine copies of Windows XP were
 17 presented with the screenshots in the sequential order of MS-WGAJ 15378, MS-WGAJ 15380,
 18 MS-WGAJ 15382, MS-WGAJ 15383 and MS-WGAJ 15384. Additionally, users who clicked
 19 the "What is WGA Notifications?" link on the "Windows Genuine Advantage Notifications
 20 Introduction" screenshot (at MS-WGAJ 15380) were presented with the "Genuine Microsoft
 21 Software" screenshot (at MS-WGAJ 15381).
 22

23 When these users were presented with the "License Agreement" screenshot at MS-WGAJ
 24 15382, the WGA EULA from MS-WGAJ 15437-38 was displayed.
 25
 26

1 (k) Versions 1.7.0018.1, 1.7.0018.5 and 1.7.0018.7 of WGA installed through
 2 the Semi-Automatic Setting of Automatic Updates

3 For versions 1.7.0018.1, 1.7.0018.5 and 1.7.0018.7 of WGA installed through the Semi-
 4 Automatic Setting of Automatic Updates, users with genuine copies of Windows XP who used
 5 the express install were presented with the screenshots in the sequential order of MS-WGAJ
 6 15378, MS-WGAJ 15379, MS-WGAJ 15380, MS-WGAJ 15382, MS-WGAJ 15383 and MS-
 7 WGAJ 15384. Additionally, express install users who clicked the "What is WGA
 8 Notifications?" link on the "Windows Genuine Advantage Notifications Introduction" screenshot
 9 (at MS-WGAJ 15380) were presented with the "Genuine Microsoft Software" screenshot (at
 10 MS-WGAJ 15381).

11
 12 Users with genuine copies of Windows XP who used the custom install were presented
 13 with the screenshots in the sequential order of MS-WGAJ 15366, MS-WGAJ 15367, MS-WGAJ
 14 15368, MS-WGAJ 15370, MS-WGAJ 15372, MS-WGAJ 15373 and MS-WGAJ 15374.
 15 Additionally, custom install users who unchecked the box on the "Choose updates to Install"
 16 screenshot (at MS-WGAJ 15368) were presented with the "Hide Updates" screenshot (at MS-
 17 WGAJ 15369), and custom install users who clicked the "What is WGA Notifications?" link on
 18 the "Windows Genuine Advantage Notifications Introduction" screenshot (at MS-WGAJ 15370)
 19 were presented with the "Genuine Microsoft Software" screenshot (at MS-WGAJ 15371).

20
 21 When express and custom install users were presented with the "License Agreement"
 22 screenshot at MS-WGAJ 15382 or MS-WGAJ 15372, the WGA EULA from MS-WGAJ 15437-
 23 38 was displayed.
 24
 25
 26

- 1 (l) Versions 1.7.0018.1, 1.7.0018.5 and 1.7.0018.7 of WGA installed through
 2 the Manual Setting of Automatic Updates

3 For versions 1.7.0018.1, 1.7.0018.5 and 1.7.0018.7 of WGA installed through the Manual
 4 Setting of Automatic Updates, users with genuine copies of Windows XP who used the express
 5 install were presented with the screenshots in the sequential order of MS-WGAJ 15439, MS-
 6 WGAJ 15440, MS-WGAJ 15378, MS-WGAJ 15379, MS-WGAJ 15380, MS-WGAJ 15382,
 7 MS-WGAJ 15383 and MS-WGAJ 15384. Additionally, express install users who clicked the
 8 "What is WGA Notifications?" link on the "Windows Genuine Advantage Notifications
 9 Introduction" screenshot (at MS-WGAJ 15380) were presented with the "Genuine Microsoft
 10 Software" screenshot (at MS-WGAJ 15381).

11 Users with genuine copies of Windows XP who used the custom install were presented
 12 with the screenshots in the sequential order of MS-WGAJ 15439, MS-WGAJ 15440, MS-WGAJ
 13 15366, MS-WGAJ 15367, MS-WGAJ 15368, MS-WGAJ 15370, MS-WGAJ 15372, MS-WGAJ
 14 15373 and MS-WGAJ 15374. Additionally, custom install users who unchecked the box on the
 15 "Choose updates to Install" screenshot (at MS-WGAJ 15368) were presented with the "Hide
 16 Updates" screenshot (at MS-WGAJ 15369), and custom install users who clicked the "What is
 17 WGA Notifications?" link on the "Windows Genuine Advantage Notifications Introduction"
 18 screenshot (at MS-WGAJ 15370) were presented with the "Genuine Microsoft Software"
 19 screenshot (at MS-WGAJ 15371).

20 Express and custom install users who did not check the box for "Windows Genuine
 21 Advantage Notification (KB905474)" on the "Choose updates to download" screenshot (at MS-
 22 WGAJ 15440) were presented with the "Hide Updates" screenshot (at MS-WGAJ 15441). Also,
 23 when express and custom install users were presented with the "License Agreement" screenshot
 24
 25
 26

1 at MS-WGAJ 15382 or MS-WGAJ 15372, the WGA EULA from MS-WGAJ 15437-38 was
2 displayed.

3
4 (m) Versions of WGA and WGA Validation installed through Microsoft Update

5 Users with genuine copies of Windows XP who installed WGA Validation and WGA
6 through Microsoft Update were presented with the screenshots in the sequential order beginning
7 with MS-WGAJ 15410 through MS-WGAJ 15427 and ending with MS-WGAJ 15434 through
8 MS-WGAJ 15436. The information in the "Details" box (at MS-WGAJ 15418) was only
9 presented to users who clicked the "Details" icon on the "Software Upgrade for Some Windows
10 Components Required" screenshot (at MS-WGAJ 15417); the three lines of text about WGA (at
11 MS-WGAJ 15423) were only presented to users who clicked the "+" before "Windows Genuine
12 Advantage Notification (KB905474)" on the "Review and Install Updates" screenshot (at MS-
13 WGAJ 15422); the "Details" box (at MS-WGAJ 15424 and MS-WGAJ 15426) was only
14 presented to users who clicked the "Details" link on the "Review and Install Updates" screenshot
15 (at MS-WGAJ 15423); and "The Windows Genuine Advantage" screenshot (at MS-WGAJ
16 15425) was only presented to users who clicked the link for "More information" in the "Details"
17 box (at MS-WGAJ 15424 and MS-WGAJ 15426).

18
19 Users with genuine copies of Windows XP who installed only WGA Validation (and not
20 WGA) through Microsoft Update were presented with the screenshots in sequential order
21 beginning with MS-WGAJ 15410 and ending with MS-WGAJ 15421. The information in the
22 "Details" box (at MS-WGAJ 15418) was only presented to users who clicked the "Details" icon
23 on the "Software Upgrade for Some Windows Components Required" screenshot (at MS-WGAJ
24 15417).

When presented with the "Read the following EULA" screenshot (at MS-WGAJ 15434), the WGA EULA from MS-WGAJ 498-500 was displayed to users who installed version 1.5.0532.2 and earlier versions of WGA. By contrast, the WGA EULA from MS-WGAJ 15437-38 was displayed to users who installed version 1.5.0540 and later versions of WGA.

(n) Versions of WGA and WGA Validation installed through Windows Update

Users with genuine copies of Windows XP who installed WGA Validation and WGA through Windows Update were presented with similar screenshots as those that were presented to users with genuine copies of Windows XP who installed WGA Validation and WGA through Microsoft Update, except that the screenshots said "Windows Update" instead of "Microsoft Update."

Users with genuine copies of Windows XP who installed only WGA Validation (and not WGA) through Windows Update were presented with the screenshots in sequential order beginning with MS-WGAJ 15389 and ending with MS-WGAJ 15395. The information in the "Details" box (at MS-WGAJ 15391) was only presented to users who clicked the "Details" icon.

4. The Dates on Which Each Set of Screenshots Was Available.

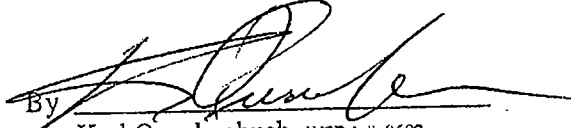
Below is a table that sets forth the time period during which each of set of the screenshots described above was available to users.

<u>Set of Screenshots Described Above</u>	<u>Dates Available to Users</u>
Screenshots for versions 1.5.0526, 1.5.0532 and 1.5.0532.2 of WGA installed through Automatic Updates	April 25, 2006 to June 26, 2006
Screenshots for versions 1.5.0540 and 1.5.0554 of WGA installed through Automatic Updates	June 27, 2006 to November 28, 2006
Screenshots for versions 1.5.0560 and 1.7.0017 of WGA installed through Automatic Updates	November 29, 2006 to February 27, 2007

Screenshots for versions 1.7.0018.1, 1.7.0018.5 and 1.7.0018.7 of WGA installed through Automatic Updates	On and after February 28, 2007
Screenshots for versions of WGA and WGA Validation installed through Microsoft Update	On and after July 26, 2005
Screenshots for versions of WGA and WGA Validation installed through Windows Update	On and after July 26, 2005

DATED this 5th day of September, 2008.

RIDDELL WILLIAMS P.S.

By 
Karl Quackenbush, WSBA # 9602

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MICROSOFT CORPORATION

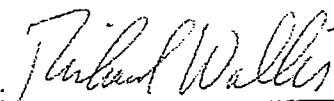
VERIFICATION

I, Richard J. Wallis, declare under penalty of perjury that the following is true and correct:

My name is Richard J. Wallis, and I have read Microsoft Corporation's Objections and Supplemental Response to Newly Added Plaintiff Charles Ellis's First Set of Interrogatories. I am authorized to sign these interrogatory responses on behalf of Microsoft Corporation, and I certify that the matters stated in the document identified above are a corporate response to Plaintiff Charles Ellis's First Set of Interrogatories. Because the matters stated in the document identified above are a corporate response, they are not all necessarily within my personal knowledge or within the personal knowledge of any single individual. Subject to these limitations, the facts contained in the foregoing responses are, to the best of my knowledge, true and correct.

Dated: September 5, 2008

By:



Richard J. Wallis
Assistant Secretary

CERTIFICATE OF SERVICE

I certify that I am a secretary at the law firm of Riddell Williams P.S. in Seattle, Washington. I am over the age of eighteen years and not a party to the within cause. My business address is 1001 Fourth Avenue, Suite 4500, Seattle, Washington 98154. On the date indicated below, I served Microsoft Corporation's Objections and Supplemental Response to Newly Added Plaintiff Charles Ellis's First Set of Interrogatories on Plaintiffs' counsel of record as indicated below:

VIA EMAIL AND FIRST CLASS MAIL

Alan Himmelfarb
KamberEdelson, LLC
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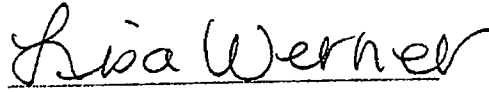
VIA EMAIL ONLY

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Scott A. Kamber
skamber@kolaw.com

Dated this 5th day of September, 2008 at Seattle, Washington.


Lisa Werner

MICROSOFT CORPORATION'S SUPPLEMENTAL
RESPONSES TO PLAINTIFF CHARLES ELLIS'S
FIRST SET OF INTERROGATORIES - 16
Case No. CV 06-0900 RAJ

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Exhibit K

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BRIAN JOHNSON, et al.,

Plaintiffs,

vs.

MICROSOFT CORPORATION, a
Washington corporation,

Defendant.

No. CV 06-0900 RAJ
[Consolidated Cases]

**MICROSOFT CORPORATION'S
OBJECTIONS AND SECOND
SUPPLEMENTAL RESPONSE TO
NEWLY ADDED PLAINTIFF
CHARLES ELLIS'S FIRST SET OF
INTERROGATORIES TO
DEFENDANT MICROSOFT
CORPORATION**

TO: Plaintiffs;

AND TO: All Counsel of Record for Plaintiffs.

INTERROGATORY NO. 12

For each VERSION of WGA that YOU identified in YOUR response to Ellis Interrogatory No. 1, with respect to users who had their update settings set to "Automatic Updates with the updates downloaded and installed automatically on a schedule specified by the user;" (as YOU used that description in YOUR Admission Responses No. 15), DESCRIBE THE PROCESS OF DOWNLOAD of WGA as it IMPACTED THE USERS COMPUTER.

For purposes of these interrogatories, where YOU are asked to DESCRIBE THE PROCESS OF DOWNLOAD of WGA, YOU are required to describe:

- (a) each and every event that occurred in the typical XP user's computer through the download sequence;
- (b) each and every process, file, resource, and/or software residing on the computer that the operation of the download utilized, and how it was so utilized;
- (c) each and every process, file resource, and/or software that the operation of the download added, deleted, or changed in the download process;

MICROSOFT'S SECOND SUPPLEMENTAL
RESPONSE TO PLAINTIFF CHARLES ELLIS'S
FIRST SET OF INTERROGATORIES - 1
Case No. CV 06-0900 RAJ

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- 1 (d) each and every change to the registry;
- 2 (e) after the process of download was completed, each and every way the computer,
- 3 or any process, file, resource, and/or software residing on the computer, was in
- 4 any way different as a result of the download from the time immediately before
- 5 the download took place.

6 **SUPPLEMENTAL ANSWER:**

7 Microsoft incorporates each of its General Objections and Objections to Definitions and

8 Instructions in its original Objections and Responses to Newly Added Plaintiff Charles Ellis's

9 First Set of Interrogatories.

10 Microsoft further objects to this Interrogatory as overly broad and unduly burdensome on

11 the ground that it seeks information that is beyond the scope of class certification discovery.

12 Microsoft also objects to this Interrogatory as vague and ambiguous with respect to the word

13 "impacted."

14 The Supplemental Answer to this Interrogatory is expressly conditioned upon the term

15 "Automatic Setting" meaning the setting of Automatic Updates where updates are downloaded

16 and installed automatically on a schedule specified by the user.

17 Subject to and without waiver of its foregoing Objections, Microsoft provides the

18 following supplemental response:

19 In its August 27, 2008 letter to Plaintiffs' counsel, Microsoft agreed to identify, by

20 referencing the various set of screenshots that Microsoft produced, the points in time when: (a)

21 WGA was downloaded to a user's computer; (b) WGA was installed onto a user's computer; and

22 (c) the WGA keys were added to the user's registry. This information is set forth below for the

23 various versions of WGA that were installed through the Automatic Setting of Automatic

24 Updates.

25

26

- 1 (1) Versions 1.5.0526, 1.5.0532, 1.5.0532.2, 1.5.0540 and 1.5.0554 of WGA
2 installed through the Automatic Setting of Automatic Updates

3 For versions 1.5.0526, 1.5.0532, 1.5.0532.2, 1.5.0540 and 1.5.0554 installed through the
4 Automatic Setting of Automatic Updates: (a) the download of WGA was completed before MS-
5 WGAJ 1540 was displayed; (b) the installation of WGA began after the user clicked "I Accept"
6 on MS-WGAJ 1542, and finished before MS-WGAJ 1545 was displayed; and (c) the addition of
7 the WGA keys to the registry began after the user clicked "I Accept" on MS-WGAJ 1542, and
8 finished before MS-WGAJ 1545 was displayed.

- 10 (2) Versions 1.5.0560 and 1.7.0017 of WGA installed through the Automatic
11 Setting of Automatic Updates

12 For versions 1.5.0560 and 1.7.0017 installed through the Automatic Setting of Automatic
13 Updates: (a) the download of WGA was completed before MS-WGAJ 15357 was displayed; (b)
14 the installation of WGA began after the user selected "I Agree" and clicked "Next" on MS-
15 WGAJ 15360, and finished before MS-WGAJ 15362 was displayed; and (c) the addition of the
16 WGA keys to the registry began after the user selected "I Agree" and clicked "Next" on MS-
17 WGAJ 15360, and finished before MS-WGAJ 15362 was displayed.

- 19 (3) Versions 1.7.0018.1, 1.7.0018.5 and 1.7.0018.7 of WGA installed through
20 the Automatic Setting of Automatic Updates

21 For versions 1.7.0018.1, 1.7.0018.5 and 1.7.0018.7 installed through the Automatic
22 Setting of Automatic Updates: (a) the download of WGA was completed before MS-WGAJ
23 15378 was displayed; (b) the installation of WGA began after the user selected "I Agree" and
24 clicked "Next" on MS-WGAJ 15382, and finished before MS-WGAJ 15384 was displayed; and
25 (c) the addition of the WGA keys to the registry began after the user selected "I Agree" and
26 clicked "Next" on MS-WGAJ 15382, and finished before MS-WGAJ 15384 was displayed.

INTERROGATORY NO. 13

For each VERSION of WGA that YOU identified in YOUR response to Ellis Interrogatory No. 1, with respect to users who had their update settings set to "Automatic Updates with the updates downloaded and installed automatically on a schedule specified by the user;" (as YOU used that description in YOUR Admission Responses No. 15), DESCRIBE THE PROCESS OF INSTALLATION of WGA as it IMPACTED THE USERS COMPUTER.

For purposes of these interrogatories, where YOU are asked to DESCRIBE THE PROCESS OF INSTALLATION of WGA, YOU are required to describe:

- (a) each and every event that occurred in the typical XP user's computer through the installation sequence;
- (b) each and every process, file, resource, and/or software residing on the computer that the installation utilized, and how it was so utilized;
- (c) each and every process, file resource, and/or software that the installation added, deleted, or changed in the installation process;
- (d) each and every change to the registry; and
- (e) after the installation was completed, each and every way the computer, or any process, file, resource, and/or software residing on the computer, was in any way different as a result of the installation from the time immediately before the installation took place.

SUPPLEMENTAL ANSWER:

Microsoft incorporates each of its General Objections and Objections to Definitions and Instructions in its original Objections and Responses to Newly Added Plaintiff Charles Ellis's First Set of Interrogatories.

Microsoft further objects to this Interrogatory as overly broad and unduly burdensome on the ground that it seeks information that is beyond the scope of class certification discovery.

Microsoft also objects to this Interrogatory as vague and ambiguous with respect to the word "impacted."

MICROSOFT'S SECOND SUPPLEMENTAL
RESPONSE TO PLAINTIFF CHARLES ELLIS'S
FIRST SET OF INTERROGATORIES - 4
Case No. CV 06-0900 RAJ

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FACSIMILE: (206) 389-1768

1 The Supplemental Answer to this Interrogatory is expressly conditioned upon the term
 2 "Automatic Setting" meaning the setting of Automatic Updates where updates are downloaded
 3 and installed automatically on a schedule specified by the user.

4 Subject to and without waiver of its foregoing Objections, Microsoft provides the
 5 following supplemental response:
 6

7 Microsoft incorporates its Supplemental Answer to Interrogatory No. 12.

8
 9 **INTERROGATORY NO. 14**

10 For each VERSION of WGA that YOU identified in YOUR response to Interrogatory
 11 No. 1, with respect to users who had their update settings set to "Automatic Updates with the
 12 updates downloaded and installed automatically on a schedule specified by the user;" (as YOU
 13 used that description in YOUR Admission Responses No. 15), DESCRIBE THE OPERATION
 of WGA as it IMPACTED THE USERS COMPUTER.

14 For purposes of these interrogatories, where YOU are asked to DESCRIBE THE
 15 OPERATION, YOU are required to describe:

- 16 (a) each and every event that occurred in the typical XP user's computer through the
 operation of WGA;
- 17 (b) each and every process, file, resource, and/or software residing on the computer
 that the operation of WGA utilized, and how it was so utilized;
- 18 (c) each and every process, file resource, and/or software that the operation of WGA
 19 added, deleted, or changed in the download process;
- 20 (d) each and every change to the registry;
- 21 (e) after the operation of WGA was completed, each and every way the computer, or
 22 any process, file, resource, and/or software residing on the computer, was in any
 way different as a result of the operation of WGA from the time immediately
 before the operation of WGA took place.

23 **SUPPLEMENTAL ANSWER:**

24 Microsoft incorporates each of its General Objections and Objections to Definitions and
 25 Instructions in its original Objections and Responses to Newly Added Plaintiff Charles Ellis's
 26 First Set of Interrogatories.

MICROSOFT'S SECOND SUPPLEMENTAL
 RESPONSE TO PLAINTIFF CHARLES ELLIS'S
 FIRST SET OF INTERROGATORIES - 5
 Case No. CV 06-0900 RAJ

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1 Microsoft further objects to this Interrogatory as overly broad and unduly burdensome on
2 the ground that it seeks information that is beyond the scope of class certification discovery.

3 Microsoft also objects to this Interrogatory as vague and ambiguous with respect to the word
4 "impacted."
5

6 The Supplemental Answer to this Interrogatory is expressly conditioned upon the term
7 "Automatic Setting" meaning the setting of Automatic Updates where updates are downloaded
8 and installed automatically on a schedule specified by the user.

9 Subject to and without waiver of its foregoing Objections, Microsoft provides the
10 following supplemental response:

11 Microsoft incorporates its Supplemental Answer to Interrogatory No. 12.

12
13
14 DATED this 10th day of September, 2008.

15 RIDDELL WILLIAMS P.S.

16
17 By 

18 Karl Quackenbush, WSBA # 9602

19
20 Charles B. Casper, admitted *pro hac vice*
Montgomery, McCracken,

21 Walker & Rhoads, LLP

22 123 South Broad Street

Philadelphia, PA 19109-1029

23 Tel: (215) 772-1500

24 Fax: (215) 772-7620

ccasper@mmwr.com

25 Attorneys for Defendant

26 MICROSOFT CORPORATION

VERIFICATION

I, Richard J. Wallis, declare under penalty of perjury that the following is true and correct:

My name is Richard J. Wallis, and I have read Microsoft Corporation's Objections and Supplemental Response to Newly Added Plaintiff Charles Ellis's First Set of Interrogatories. I am authorized to sign these interrogatory responses on behalf of Microsoft Corporation, and I certify that the matters stated in the document identified above are a corporate response to Plaintiff Charles Ellis's First Set of Interrogatories. Because the matters stated in the document identified above are a corporate response, they are not all necessarily within my personal knowledge or within the personal knowledge of any single individual. Subject to these limitations, the facts contained in the foregoing responses are, to the best of my knowledge, true and correct.

Dated: September 16th, 2008

By: Richard J. Wallis
Richard J. Wallis
Assistant Secretary

MICROSOFT'S SECOND SUPPLEMENTAL
RESPONSE TO PLAINTIFF CHARLES ELLIS'S
FIRST SET OF INTERROGATORIES - 7
Case No. CV 06-0900 RAJ

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CERTIFICATE OF SERVICE

I certify that I am a secretary at the law firm of Riddell Williams P.S. in Seattle, Washington. I am over the age of eighteen years and not a party to the within cause. My business address is 1001 Fourth Avenue, Suite 4500, Seattle, Washington 98154. On the date indicated below, I served Microsoft Corporation's Objections and Supplemental Response to Newly Added Plaintiff Charles Ellis's First Set of Interrogatories on Plaintiffs' counsel of record as indicated below:

VIA EMAIL

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VIA EMAIL

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William W. Houck
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Scott A. Kamber
skamber@kolaw.com

Dated this 11th day of September, 2008 at Seattle, Washington.


Lisa Werner

MICROSOFT'S SECOND SUPPLEMENTAL
RESPONSE TO PLAINTIFF CHARLES ELLIS'S
FIRST SET OF INTERROGATORIES - 8
Case No. CV 06-0900 RAJ

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